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THE FBI AND CISPES

REPORT

OF THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

together with

ADDITIONAL VIEWS

JULY 1989

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LETTER OF TRANSMITTAL

Hon. JOSEPH R. BIDEN, Jr., *Chairman*
Hon. STROM THURMOND, *Ranking Minority Member,*
Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR BIDEN and SENATOR THURMOND: On February 23, 1988, the Select Committee on Intelligence formally began an investigation of improper activities in the FBI's investigation of the Committee in Solidarity with the People of El Salvador (CISPES). We herewith transmit to the Senate Judiciary Committee the public report resulting from the Intelligence Committee's investigation.

Pursuant to Senate Resolution 400 (94th Congress), the Judiciary and Intelligence Committees have concurrent jurisdiction over the FBI's counterintelligence and counterterrorism programs. The Intelligence Committee took the lead in this case because the FBI's international terrorism investigation of CISPES in 1983-85 involved extensive classified information and was conducted pursuant to the classified Attorney General's Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations.

From the outset, our investigation has taken into account the interests of the Judiciary Committee. Our staffs worked together in drafting a comprehensive request to the FBI for documents pertinent to the inquiry. We also advised Director Sessions that we anticipated involvement by Members of the Judiciary Committee in matters that fell within their jurisdiction.

Four Members of the Judiciary Committee serve on the Intelligence Committee, and all Members of the Judiciary Committee were invited to the Intelligence Committee's public and closed hearings on this matter. We particularly appreciate the participation of the Ranking Minority Member and of Senator Leahy, on whose behalf we submitted to the FBI Director extensive questions for the record.

FBI Director Sessions has made numerous changes in FBI policies and procedures in light of the CISPES investigation. This report identifies several issues that need further attention. The most immediate concerns for both of our committees are the disposition of FBI files on the CISPES international terrorism investigation and the revision of the Attorney General's guidelines that apply to international terrorism investigations of groups such as CISPES. Subjects for further attention that involve law enforcement activities primarily within Judiciary Committee jurisdiction include policies for enforcement of the Foreign Agents Registration Act and for the handling of information on public demonstrations.

Although the CISPES investigation was an aberration that contrasts sharply with the FBI's overall record in recent years, it has served as a reminder of the need for close and continuing congressional oversight of the FBI. Americans should be free to disagree with the policies of their government without fear of investigation by any government agency. Corrective actions based on the lessons of the CISPES investigation should strengthen our nation's ability to fight terrorism without jeopardizing the free exercise of constitutional rights.

Sincerely,

DAVID L. BOREN,
Chairman.
WILLIAM S. COHEN,
Vice Chairman.

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EXECUTIVE SUMMARY

This report presents the findings of an oversight inquiry with respect to alleged improper activities in the FBI investigation of a domestic political group, the Committee in Solidarity with the People of El Salvador (CISPES), and the FBI's relationship with the Salvadoran expatriate who was a principal source in that investigation, Mr. Frank Varelli. The Intelligence Committee took the lead in this case because the FBI conducted its international terrorism investigation of CISPES pursuant to classified Attorney General's Guidelines for FBI Foreign Counterintelligence Investigations.

The Committee's independent investigation served to test and corroborate an FBI Inspection Division inquiry that was initiated by FBI Director William S. Sessions. The Committee and the FBI Director reached the same basic conclusions: the FBI international terrorism investigation of CISPES was initiated primarily on the basis of allegations that should not have been considered credible; it was broadened beyond the scope justified even by those allegations; and it continued after the available information had clearly fallen below the standards required by the applicable guidelines.

The Committee also concurred in the Director's assessment that the FBI's conduct in the CISPES investigation and in its relationship with Frank Varelli was an aberration among the thousands of counterintelligence and counterterrorism investigations the FBI conducts annually. This case contrasts sharply with the overall record of respect for and protection of First Amendment rights that characterized the FBI's counterintelligence and counterterrorism programs under Director William H. Webster. No similar case has come to the Committee's attention, and the Committee's oversight of other FBI activities has found a definite pattern of adherence to established safeguards for constitutional rights.

The CISPES case was a serious failure in FBI management, resulting in the investigation of domestic political activities that should not have come under governmental scrutiny. It raised issues that go to the heart of this country's commitment to the protection of constitutional rights. Unjustified investigations of political expression and dissent can have a debilitating effect upon our political system. When people see that this can happen, they become wary of associating with groups that disagree with the government and more wary of what they say or write. The impact is to undermine the effectiveness of popular self-government.

FBI Investigations of CISPES

Significant FBI involvement with CISPES started in June, 1981, when Frank Varelli began to infiltrate the local CISPES chapter in Dallas, Texas. From September through December, 1981, the FBI conducted an investigation to determine whether CISPES was in violation of the Foreign Agents Registration Act (FARA). From March, 1983, through June, 1985, the FBI conducted an international terrorism investigation of CISPES that involved all 59 field offices and led to 178 "spin-off" investigations. The last of these was closed in early 1988. FBI officials indicated that a little over 20,000 employee hours were spent on the CISPES investigation, which they testified was small in comparison to many other FBI investigations or investigative programs.

The FARA investigation of 1981 was confined to five field offices and closed after three months. The Committee found nothing to indicate any departure from established policies and procedures. FBI files do not explain why the Justice Department requested an FBI investigation on the basis of an unverified document received from the State Department that did not on its face show direction and control by a foreign power. The limited scope and duration of the FBI investigation and its focus on a possible criminal violation suggest, however, that this inquiry did not intrude unduly into the exercise of First Amendment rights.

FBI Headquarters authorized the Dallas field office to penetrate CISPES in June 1981, two months before the opening of the FARA investigation, and Mr. Varelli actually began attending and reporting on CISPES meetings before any investigation of CISPES was authorized. A separate investigation of a Salvadoran guerrilla group was used to justify Mr. Varelli's penetration of CISPES, but the FBI lacked the factual basis that should be required before such intrusive investigative activity is undertaken.

The FBI opened the CISPES international terrorism investigation in March, 1983, based primarily upon Mr. Varelli's information, without properly testing the credibility of that information. The investigation was later expanded nationwide without adequate justification, and it continued beyond mid-1984 despite evidence of Mr. Varelli's unreliability. It was closed in June, 1985, after the Justice Department's Office of Intelligence Policy and Review (OIPR) found that the FBI's stated justification failed to satisfy the Attorney General's guidelines.

The Committee estimates that the main CISPES investigation resulted in retrievable information being added to FBI files about approximately 2,375 individuals and 1,330 groups. In addition to source reporting, the FBI used extensive physical surveillance, as summarized in the FBI Inspection Division Report:

> The FBI undertook both photographic and visual surveillances of rallies, demonstrations, etc., in its investigation of CISPES. This technique involved the taking of photographs during demonstrations, surveillance of rallies on college campuses, and attendance at a mass at a local university. The purpose of taking photographs during demonstrations was for use or future use in identifying CISPES leaders. Such identification could be effected by displaying photographs to [sources] familiar with the leaders. . . . [O]n a few occasions, the FBI also surveilled churches and church groups involved in the sanctuary movement. Twenty-two field offices were identified as having utilized the surveillance technique during the CISPES and CISPES spin-off investigations.

Based on the materials reviewed by the Committee, the Assistant Director for the Criminal Investigative Division appears to have been the highest FBI official with contemporaneous knowledge regarding the planned initiation of the CISPES international terrorism investigation. During the investigation, Director Webster per-

sonnally approved the use of a particular technique by one field office. But the key decisions were made by the lowest level Supervisory Special Agent at FBI Headquarters. The Terrorism Section chief and unit chiefs do not appear to have questioned the Headquarters supervisor's evaluation of the predicate or to have reviewed carefully the instructions sent to the field. Director Sessions determined that the section chief and a unit chief should be disciplined for their role in the case, but the FBI inspection findings and the reviewed FBI files do not suggest that they personally initiated or proposed significant steps in the investigation. Rather, the FBI Director found a lack of managerial controls within the Terrorism Section, especially during the CISPES investigation.

Director Webster had instituted an auxiliary safeguard within the FBI to ensure that his policies with respect to First Amendment rights were properly implemented. A special assistant to the Assistant Director for the Intelligence Division handled issues arising under the Attorney General's guidelines for foreign counterintelligence investigations, and a special assistant in the Director's office dealt with legal and policy issues involving the interpretation of the Attorney General's guidelines for domestic security/terrorism investigations. The special assistant in the Intelligence Division normally consulted on First Amendment issues in specific cases with the supervisors and unit chiefs in the Intelligence Division, and the special assistant in the Director's office consulted with those who handled *domestic* terrorism investigations. Neither special assistant played such a role, however, in *international* terrorism cases supervised by the Terrorism Section in the Criminal Investigative Division.

The Committee does not believe the CISPES investigation reflected significant FBI political or ideological bias in the conduct of international terrorism investigations. There was a legitimate basis for the FBI to investigate material support for the use of violence by guerrillas seeking to overthrow the Salvadoran government. Some incidents raised questions, however, about the propriety of disseminating analyses from ideologically motivated outside groups to field offices without independent review or caveats regarding the sources of such analyses.

The Committee found that the FBI does not have a clearly articulated policy for opening international terrorism investigations where U.S. nationals have not been targeted, but tends to emphasize those groups that attack U.S. interests. The question of the adequacy of FBI investigations of support for right-wing political violence abroad, such as the Salvadoran "death squads" or the Nicaraguan contras, is beyond the scope of this report. In the Committee's view, the FBI should not pick and choose among groups engaged in political violence solely on the basis of their support for or opposition to U.S. policy.

The Committee found no reason to disagree with the conclusion in the FBI Inspection Division report that "found no evidence . . . that . . . instructions were given or requests for information were made to FBI officials during the conduct of the CISPES investigation by anyone within the office of the White House or acting on behalf of the White House in an effort to influence their investigation."

THE HANDLING OF FRANK VARELLI

The most critical management breakdown involved the handling of Mr. Frank Varelli as an FBI source. This mishandling of Mr. Varelli had broader consequences because of the access he was given to classified FBI documents and the relationship he was allowed to maintain with elements of a Salvadoran security service. While no definite evidence has been found, the possibility exists that Mr. Varelli may have compromised classified information from FBI investigations and other U.S. Government agencies, perhaps under the impression that he was acting with the permission of his FBI handler in the Dallas office. The mishandling of Mr. Varelli also may have jeopardized the personal safety and human rights of individuals. Mr. Varelli has publicly admitted passing FBI information to the Salvadoran National Guard; the Committee has found no definite evidence to corroborate or refute his claim.

A 1981 trip by Mr. Varelli to El Salvador appears to have been paid for out of funds obtained from sources other than the FBI. The funds had been advanced to Mr. Varelli by an American to whom he had apparently suggested the possibility of hiring themselves out to assassinate Salvadoran president José Napoleón Duarte.

The problems in Mr. Varelli's reliability and activities went unnoticed in part because his FBI handler himself proved unreliable. There was no effort to check with local police in other parts of the country where Mr. Varelli had studied or worked, to ask other U.S. Government agencies whether they had relevant information on him, or to follow up on the failure of efforts to find U.S. Government files with his fingerprints or military record. (The military record was finally found six years later, during an inquiry into Mr. Varelli's later allegations of FBI misconduct.) No thought was given, moreover, to polygraphing Mr. Varelli, despite the fact that his description of events leading up to his immigration varied from one account to the next. The FBI Director's findings on the CISPES investigation are especially critical of the manner in which Mr. Varelli's case agent handled his information—accepting the reports with little or no corroboration, and sometimes embellishing them further.

Why was this allowed to happen? The answer goes well beyond the failings of particular FBI personnel. The administrative practices in the Terrorism Section at FBI Headquarters made a single supervisor responsible for reviewing and approving both substantive investigations and the *bona fides* of the particular sources used in those investigations. There was no mechanism for independent examination of the credibility of the sources of information that an FBI field case agent and the Headquarters supervisor might want to use because it strengthened the case for an investigation.

SPIN-OFF INVESTIGATIONS AND REFERENCES TO OTHER GROUPS

The vast majority of groups mentioned in the CISPES documents that have been released under the Freedom of Information Act were not the subject of any other type of inquiry as a result of the CISPES investigation. Information about the groups was collected incidentally to the CISPES investigation with little active investigation beyond occasional checks of existing FBI file indices, local law enforcement records, and telephone subscriber records. FBI sources and surveillance directed at CISPES activities often produced reports and documents on activities undertaken jointly by CISPES and these other groups.

In four of the CISPES spin-off group cases, the investigations raise policy issues because they appear to have been based solely on ideological similarity or association with CISPES. These cases raise a significant policy question: how widely may the FBI investigate groups that associate or sympathize with subjects of international terrorism investigations? The potential is great for what has been described as an "inkblot effect" to encompass legitimate political organizations within the scope of FBI inquiry without clear justification. This concern should be taken into account in revising and clarifying FBI and Justice Department policies.

In four other cases involving groups on a list submitted by the Committee, FBI investigative activity raised additional issues. One group was the subject of a domestic security/terrorism investigation for three months with no apparent predicate. Three groups were the subjects of continuing reports by FBI sources, including reports on planned demonstrations. It is not clear whether the FBI solicited information from sources about these groups. If so, it would raise a question of possible violation of policies requiring that a separate investigation be opened.

An undetermined but substantial amount of information about protest demonstrations by a wide range of groups across the ideological spectrum is acquired, maintained and disseminated by the FBI without active investigation. Many if not most of the demonstrations pose no threat to the public safety. FBI officials contend that this is an entirely legitimate function and is not intended to have any adverse implications or consequences for the groups whose political activities are thereby recorded in FBI files. This issue must be addressed through continuing oversight by the Intelligence and Judiciary Committees.

VIOLATIONS OF POLICIES AND PROCEDURES

FBI inspectors examined the record of the CISPES investigations for possible violations of federal law and applicable policies and procedures, including the Attorney General's guidelines. They determined that Frank Varelli's FBI handler, who resigned from the FBI in 1984, gave Mr. Varelli classified documents and withheld money that was to have been paid to Mr. Varelli. Other than that, the FBI Inspection Division report did not identify any illegal acts or violations of constitutional rights committed by the FBI as part of the CISPES investigations. Director Sessions and the FBI inspectors did not address the question of possible violation of the Privacy Act.

Other incidents raised questions of legality, but were determined not to constitute violations of law by FBI personnel. For example, an FBI source provided the FBI a copy of another person's address list by gaining unconsented access to the desk where the address list was located. The source apparently acted without proper authorization. There was no indication that the FBI directed the source to search the desk or seize the address list. In another case FBI Agents posing as potential home buyers toured the home of a subject of the investigation with a real estate agent. Although the Agents obtained approval for the visit from federal prosecutors in advance, the Justice Department Counsel for Intelligence Policy subsequently indicated that they may have exceeded the reasonable scope of consensual observation. Other incidents included the removal of a field office file on a CISPES spin-off investigation that was opened but apparently never conducted, and another incident where a corner of an FBI Headquarters document was cut off, apparently to remove initials identifying an FBI employee responsible for the mishandling of an investigative matter. The FBI Special Agent responsible for the removal of the file had already resigned by the time of the Inspection Division inquiry; the FBI supervisors who handled the Headquarters document were disciplined.

Neither the FBI Inspection Division report nor the Committee's investigation found any evidence that the FBI was involved in any burglaries or break-ins.

The FBI Inspection Division report identified 31 instances of possible violations of the Attorney General's guidelines and described them as "mostly of a minor and technical nature." Director Sessions testified that the FBI's Legal Counsel Division "opined that only fifteen of these instances were in fact violations, and that of those violations, thirteen warrant being reported to the President's Intelligence Oversight Board." The FBI later decided to make the Inspection Division report itself available to the Board for their review, as opposed to just reporting specific violations. The difference of opinion between the Inspection Division and Legal Counsel Division primarily concerned the extent to which the FBI is permitted to make inquiries about an individual under the "umbrella" of a group investigation.

In several cases, the Inspection Division and the Legal Counsel Division agreed that the FBI's inquiries about an individual under the "umbrella" of the CISPES investigation were so extensive that they violated the requirement to open a separate investigation. The Two Divisions also agreed that it was a violation to use an individual CISPES spin-off investigation as an "umbrella" for inquiries about another person, as occurred in a few cases.

The FBI Director found that three individual spin-off investigations violated the Attorney General's guidelines because they did not have a sufficient predicate. In one case a Xavier University professor was investigated on the basis of an exam question and a speaker invited to the class. Director Sessions indicated in the September 14, 1988, hearing that he shared a Select Committee member's concern over "the threat to academic freedom and civil liberties that this sort of investigation poses."

The FBI Director also concluded that the CISPES investigation was unnecessarily broadened to include "rank and file members" of that group. As a result of this overbreadth, predication for other spin-off cases was weak in many instances. While the Committee is not in a position to interpret Executive branch guidelines, the weakness of the predication in these other cases is a matter of concern. Spin-off investigations were apparently initiated solely on the basis of attendance at the showing of a CISPES-sponsored film, the appearance of names on lists of participants at CISPES conferences, and similar associations having no other relevance to the purpose of the original investigation.

The FBI Inspection Division report did not discuss the possibility that Mr. Varelli's infiltration of the Dallas CISPES chapter in mid-1981, authorized under another investigation before any CISPES investigation had been opened, violated the Attorney General's guidelines or FBI procedures. Whatever may be the technical interpretation of particular guidelines provisions, this activity was unjustified.

The FBI inspection report, notably, does not consider the decisions to open the CISPES investigation without properly validating the predicate, and to expand the scope of the investigation beyond those elements of the group reasonably suspected of knowing involvement in the alleged activities providing the predicate, to be violations of the Attorney General's guidelines. This position is at least questionable.

FBI inspectors discovered a separate international terrorism investigation that the FBI continued for 15 months after the Justice Department/OIPR questioned whether it met the requirements of the Attorney General's guidelines.

Certain instances of noncompliance with other internal FBI procedures were as serious as many of the Attorney General's guidelines violations. Telephone toll records were obtained by fourteen field offices, and approval for these requests within the Criminal Investigative Division never reached the level of authority within the FBI required by previous instructions of the Director. In one case an FBI field office violated FBI policy on accepting school record information protected against disclosure by the Buckley Amendment (20 USC 1232g).

REMEDIAL ACTIONS

Director Sessions disciplined six current FBI employees at the supervisor, unit chief, and section chief levels "because of the managerial or supervisory inadequacies displayed by them during the CISPES investigation." And he ordered that a series of remedial actions be taken to make "significant improvement [in] FBI management procedures and policies" so as to "substantially increase the likelihood that future CISPES cases will not occur." The Committee is satisfied that the Director's conclusions on these matters are solidly based and that he has identified most of the problems in FBI management and supervision that contributed to the mistakes made in this case.

Senior FBI officials, above the section chief level, lacked sufficient direct, personal involvement to warrant disciplinary action. However, senior officials must always assume ultimate responsibility to correct administrative weaknesses which allow improper activities like those in the CISPES case to occur. In the early 1980s, the FBI inspection division identified and reported some of the administrative problems that later allowed the CISPES breakdown to occur. Actions should have been taken at that time to remedy those deficiencies.

Director Sessions' establishment of a mechanism for independent review of FBI sources in terrorism investigations is desirable as a counterintelligence matter to detect deception and uncover foreign "plants," as well as to ensure that investigations are soundly predicated under applicable guidelines. The Committee is also concerned that FBI Terrorism Section personnel, perhaps through no fault of their own, lack background knowledge of foreign political developments and personalities relevant to FBI international terrorism investigations. The FBI does not have the resources to staff its international terrorism program with a large cadre of foreign area specialists. Given these constraints, the FBI should fill the gaps in its knowledge not only by improved selection and training of its own employees, but also by more effective interagency communication and consultation.

The Committee is pleased that Attorney General Dick Thornburgh has established an FBI/Justice Department working group, chaired by the Counsel for Intelligence Policy, to recommend modifications in the current Attorney General's guidelines. Consideration should be given to alternatives to the current framework, including a single set of guidelines for all FBI counterterrorism investigations of domestic-based groups and/or separate guidelines for international terrorism investigations that focus on violent factions rather than on entire organizations. Even if two sets of Attorney General's guidelines for FBI counterterrorism investigations are retained, there should be consistent standards for investigations that have substantial First Amendment implications. The working group should also consider making all or the major part of the new guidelines unclassified.

In light of its continuing interest in the guidelines issues raised by the CISPES investigation, the Committee is asking the Attorney General to provide the proposed new guidelines to the Intelligence and Judiciary Committees of the Senate prior to his final approval of such guidelines, so that the Committees might consider them and offer any views they may have.

The FBI does not appear to have received adequate guidance from the Justice Department on the extent to which FBI international terrorism investigations should collect information about peaceful political activities of domestic groups to determine the possibility of Foreign Agents Registration Act violations. Another question requiring clarification is the extent to which leaders and members of a group may be investigated as part of the overall investigation of the group, without opening individual investigations that have their predicates reviewed separately. The CISPES investigation revealed a lack of consistent policy on this question among FBI components and between the FBI and the Justice Department. Clear standards are required so that FBI Special Agents and field supervisors know what kinds of inquiries they have the discretion to make about an individual under the "umbrella" of a group investigation. The Committee also believes that careful attention is needed to the issues raised by the FBI's acquisition of extensive information about lawful protest demonstrations.

Critical decisions in the CISPES case were made at the lowest supervisory level at FBI Headquarters. The Committee believes that an investigation having First Amendment implications comparable to the CISPES case should have the Director's personal review. The record of the CISPES investigation also requires the Attorney General and the FBI Director to consider a more substantial Justice Department/OIPR role in reviewing FBI investigations with significant First Amendment implications, especially where broad-based groups like CISPES are involved.

Finally, the Committee favors the removal from FBI custody—by expunging or by transfer to the Archives—of the FBI Headquarters and field office files on the CISPES international terrorism investigation and the comparable files on CISPES spin-off investigations which lacked information establishing a valid independent predicate. If procedures are needed to accommodate FBI interests in, for example, the processing of Freedom of Information Act requests to protect sources and methods, such arrangements can be made without opening the files to wider access.

The Committee will continue to monitor this matter until it is satisfied that information in the CISPES files which never should have been gathered in the first place—much of which has the potential to damage the reputation of innocent persons who have involved themselves in no illegal activity—is expunged from the files of the FBI or otherwise protected from use or dissemination within or outside the FBI, except to service Freedom of Information Act or Privacy Act requests, etc. Until this is accomplished the Committee will not feel that the matter has been brought to a satisfactory conclusion. If the Executive branch cannot develop an adequate solution, the Committee may have to consider legislative action.

INTRODUCTION

The Federal Bureau of Investigation is the U.S. Government agency with principal responsibility for the investigation of terrorism that is planned, conducted, or assisted within the United States or that is directed against U.S. nationals abroad. In the current period of widespread terrorist activity throughout the world, the FBI has a solid record of success in preventing terrorist acts and in identifying and apprehending criminal terrorist suspects. During the 1980s the United States did not experience the upsurge of terrorism that occurred in other countries—with the consequent debilitating impact on our political and legal processes that such activities can exact. While this can be attributed in part to geography and terrorist political calculations, the FBI under Director William H. Webster deserves much of the credit.

It is perhaps the nature of investigations that they run the risk of becoming too intrusive and too extensive. Certain bounds have therefore been established, to protect individual rights in a free society. Some limits are established by the Constitution and laws of the United States, enforced by the courts. Other constraints are embodied in Executive branch guidelines and policies that do not have the force of law, but are a basis for external oversight within the Executive branch and by the Congress. The Senate Intelligence Committee's jurisdiction in this field is derived from its responsibility (shared with the Judiciary Committee) to oversee the FBI counterterrorism program.

After the adoption of Attorney General's guidelines for the FBI in 1976, the FBI terminated long-standing policies for conducting intelligence investigations of domestic political activities. Under Director Webster in 1978-87, the FBI concentrated on counterintelligence investigations of hostile foreign intelligence operations and counterterrorism investigations of domestic and international terrorist activities. In 1979 Director Webster endorsed a statutory charter for the FBI that would have codified the essential elements of the Attorney General's guidelines, and the Director's general guidance to Bureau Agents stressed the importance of respect for First Amendment rights. These policies helped restore public confidence in the FBI, which had been shaken in the mid-1970s by the disclosure of past abuses. There is, therefore, a strong public interest in any allegations of FBI departure from those policies.

This report presents the findings of an oversight inquiry by the Senate Intelligence Committee with respect to alleged improper activities in the FBI investigation of a domestic political group, the Committee in Solidarity with the People of El Salvador (CISPES), and the FBI's relationship with the Salvadoran expatriate who was a principal source in that investigation, Mr. Frank Varelli. The Intelligence Committee has taken the lead in this case because the FBI's international terrorism investigation of CISPES was opened and conducted pursuant to classified Attorney General's Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations.

I. OVERVIEW

Significant FBI involvement with CISPES started in June 1981, when Mr. Frank Varelli began to infiltrate the local CISPES chapter in Dallas, Texas. From September 14 through December 2, 1981, the FBI conducted an investigation to determine whether CISPES was in violation of the Foreign Agents Registration Act. From March 30, 1983, through June 18, 1985, the FBI conducted an international terrorism investigation of CISPES that involved all 59 field offices and led to 178 "spin-off" investigations. The last of these was closed in early 1988. FBI officials indicated that a little over 20,000 employee hours were spent on the CISPES investigation, which they testified was small in comparison to many other FBI investigations or investigative programs.

The Committee began its investigation in February, 1988, to look into allegations of FBI misconduct regarding CISPES and Mr. Varelli. The Committee's independent investigation served to test and corroborate the FBI Inspection Division's own comprehensive internal inquiry, which was initiated by FBI Director William S. Sessions "soon after [he] became aware of the interest of Congress in this matter." [1] In certain respects the Committee probed beyond the initial scope of the inspection report to ensure that significant issues were adequately explored. Committee staff examined over 2,200 classified documents, totaling more than 11,000 pages. The Committee also took testimony and its staff conducted interviews with certain personnel at the FBI, CIA and Department of Justice.

The FBI Inspection Division reviewed over 375 major files, including all headquarters and field office CISPES investigative files, as well as the case files on individuals and groups that were opened as a result of the CISPES investigation. FBI inspectors conducted over 200 interviews of field and headquarters supervisory personnel, of the FBI case agents who handled the investigations, and of other FBI agents with investigative responsibilities relating to CISPES. The Inspection Division produced a 350-page report with 28 recommendations and two lengthy appendices.

At the end of this process the Committee and Director Sessions reached the same basic conclusions: The investigation of CISPES and the handling of Frank Varelli were fundamentally flawed and called for strong remedial measures. The FBI had initiated an international terrorism investigation of CISPES on the basis of allegations that should not have been considered credible, had broadened the investigation beyond the scope justified even by those allegations, and had continued the investigation after the available information had clearly fallen below the standards required by the applicable guidelines. The FBI's handling of Mr. Varelli fell far short of the requirements of competence and professionalism expected of U.S. law enforcement and intelligence agencies. The Committee also concurred in the Director's assessment that the FBI's conduct in the CISPES investigation and in its relationship with Frank Varelli was an aberration among the thousands of counterintelligence and counterterrorism investigations that the FBI conducts annually.

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[1] U.S. Senate, Select Committee on Intelligence. Senate Select Committee on Intelligence Inquiry into the FBI Investigation of the Committee in Solidarity with the People of El Salvador (CISPES), U.S. Government Printing Office (Washington: 1989), S. Hrg. 100-1051 (hereinafter cited as SSCI Hearings), hearing of September 14, 1988, p. 120.

II. PRINCIPAL ISSUES

The CISPES investigation, although it was clearly aberrant, raised important issues that go to the heart of this country's commitment to the protection of constitutional rights. In addition, the mistakes made in the CISPES investigation and especially in the handling of the FBI's relationship with Frank Varelli reflected problems in the management of the FBI counterterrorism program. These were the focus of the FBI Director's concerns and the Committee's oversight investigation. The Committee believes a detailed public report on the findings of these inquiries is necessary to explain how such a departure from normal standards could occur and to help ensure that safeguards are put in place to prevent any recurrence.

A. PROTECTION OF CONSTITUTIONAL RIGHTS

The American people have the right to disagree with the policies of their government, to support unpopular political causes, and to associate with others in the peaceful expression of those views, without fear of investigation by the FBI or any other government agency. As Justice Lewis Powell wrote in the Keith case, "The price of lawful public dissent must not be a dread of subjection to an unchecked surveillance power." [2] Any investigation that may impinge upon the exercise of First Amendment rights must have a clear justification under formal standards, subject to independent review and accountability.

Federal laws place limits on particular FBI investigative techniques, such as electronic surveillance, and the federal civil rights statutes may apply when tangible harm is done to persons exercising their constitutional rights. There is no evidence that these laws were violated in the CISPES investigation. But Federal laws do not regulate most of the FBI's standard investigative methods, including photographic and visual surveillance, trash checks, the use of informants and undercover agents, attendance at meetings and infiltration of groups, interviews of individuals and their employers and associates, and checks of various law enforcement, license, utility, and credit records. Investigations such as the CISPES case using these methods are governed by internal FBI policies and by guidelines issued by the Attorney General. Violations are normally punishable only by internal disciplinary action. The CISPES investigation demonstrated the vital importance of adherence to policies and guidelines that keep the FBI from making unjustified inquiries into political activities and associations.

There may not have been tangible harm intended or done to any groups or individuals involved in constitutionally-protected activity, but unjustified investigations of political expression and dissent can have a debilitating effect upon our political system. When people see that this can happen, they become wary of associating with groups that disagree with the government and more wary of what they say or write. The impact is to undermine the effectiveness of popular self-government. If the people are inhibited in expressing their views, a nation's government becomes increasingly divorced from the will of its citizens. That has been the aim, as noted earlier, of many terrorist groups that seek to provoke repression and thereby create an increasingly alienated populace. Corrective measures based on the lessons of the CISPES investigation should strengthen our nation's ability to fight terrorism without jeopardizing the free exercise of constitutional rights.

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[2] United States v. United States District Court (Keith), 407 U.S. 297, 314 (1972).

B. FBI MANAGEMENT EFFECTIVENESS

The issues in the CISPES investigation concerned not only constitutional rights, but also the effective management of the FBI counterterrorism program. The FBI has limited resources with which to meet its extensive law enforcement and intelligence responsibilites. The efficient use of those resources depends on skilled professional investigators and supervisors, both at FBI Headquarters and in the 58 FBI field offices around the country. If the supervision is inadequate, the FBI can dissipate its energies on unnecessary investigative activities that do not contribute to the accomplishment of sound counterterrorism objectives. For example, without a careful assessment of the credibility of sources, such as Frank Varelli, significant investigative policy decisions may be made on the basis of erroneous information.

Since the first Attorney General's guidelines for FBI investigations were promulgated in 1976, the FBI and the Justice Department have instituted a variety of internal checks to ensure compliance. An Office of Intelligence Policy and Review in the Justice Department provides an independent review of the justification for international terrorism investigations of domestic groups such as CISPES that are conducted under the Attorney General's classified guidelines for FBI foreign counterintelligence investigations. The Justice Department review unit depends almost exclusively on the information provided by the FBI. If that information is faulty because, for example, of a failure to scrutinize sources carefully, the system of independent Justice Department review may break down. The same break-down may occur in the process of obtaining high-level approval of particular investigative measures, including decisions that reach the level of the Director and the Attorney General.

The CISPES investigation and the FBI-Varelli relationship brought to light management weaknesses at virtually all levels of the FBI, from the working-level Special Agent in the field to the Director's office. Mistakes that should have been corrected by supervisors in the field or at FBI Headquarters were overlooked or disregarded. Regular internal inspections failed to uncover and report irregularities. Headquarters instructions were issued without adequate scrutiny, and ambiguities in guidelines and policies were not clarified. In a case with extensive international dimensions, clearly unreliable reports and sources were accepted without careful analysis, foreign area expertise, or reference to other U.S. agencies with relevant knowledge. Most troublesome was the way Frank Varelli was allowed to establish back-channel liaison between the FBI and an intelligence unit of the Salvadoran National Guard without proper supervision and coordination, contrary to U.S. national policy and seriously risking the compromise of classified information.

Overall, the FBI personnel most actively involved with the CISPES investigation and supervision of Frank Varelli failed to meet the standards of competence and professionalism that should be required for the FBI as both a criminal law enforcement agency and a key member of the U.S. intelligence community.

III. THE COMMITTEE INVESTIGATION

Since its formation pursuant to Senate Resolution 400 (94th Congress) in 1976, the Senate Intelligence Committee has had concurrent jurisdiction with the Judiciary Committee for oversight of the FBI foreign counterintelligence program and the FBI counterterrorism program. This oversight includes annual review of the budgets for these FBI programs, which are included in the Intelligence Authorization Act; regular reports and briefings on the use of particular statutory authorities, such as electronic surveillance under the Foreign Intelligence Surveillance Act; ongoing examination of the overall quality and effectiveness of FBI counterintelligence and counterterrorism operations; and periodic inquiries in response to allegations of misconduct. These oversight activities have given the Committee extensive information about classified FBI investigative operations.

The Committee first learned of the CISPES investigation in 1984 through materials submitted with the budget justification for the FBI counterterrorism program and in testimony by a senior Justice Department official at closed Committee hearings on alleged U.S. intelligence community relationships with elements of Salvadoran "death squads." Committee staff requested an FBI briefing on the CISPES case and was told that the Bureau was investigating specific allegations of material support to Salvadoran guerrillas in the United States. In 1985 the House Permanent Select Committee on Intelligence requested and received similar information, and FBI Director William H. Webster provided assurance at a closed hearing that the CISPES investigation was proper and appropriately limited.[3] In July, 1985, the Senate Intelligence Committee staff was informed that the CISPES investigation was closed.

A. 1987 ALLEGATIONS

Frank Varelli, who had been a principal FBI source during the investigation, charged publicly in early 1987 that the FBI conducted illegal break-ins of the residences of CISPES leaders in Dallas, Texas, that the FBI prepared entries on prominent American political figures for a "terrorist photograph album," and that FBI information on Salvadorans in the United States was passed to elements of the Salvadoran security services linked to "death squads." Mr. Varelli's credibility was called into doubt at a hearing before the House Judiciary Subcommittee on Civil and Constitutional Rights. Mr. Varelli's conflicting statements raised concerns both about the reliability of the information upon which the FBI based the CISPES investigation and about the FBI's use of Mr. Varelli in that investigation.

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[3] U.S. House of Representatives, Permanent Select Committee on Intelligence. The FBI Investigation of CISPES, U.S. Government Printing Office (Washington: 1989), hearing of September 29, 1988 (hereinafter cited as HPSCI Hearing), p. 1.

The Intelligence Committee questioned FBI Director Webster about these matters at the confirmation hearings on his nomination to be Director of Central Intelligence in 1987. Director Webster denied Mr. Varelli's charges and said the FBI had determined that purported FBI "terrorist photograph album" entries on prominent Americans, including Members of Congress, were fabrications. In a classified response to a Committee question, Director Webster summarized the information that he said the FBI relied upon to justify the CISPES investigation under the Attorney General's guidelines. After Director Webster's confirmation hearings, the Committee advised the FBI of its intention to pursue these issues more fully when the internal FBI inquiry into Mr. Varelli's allegations was completed.

B. 1988 INVESTIGATION

Through the Freedom of Information Act, concerned individuals and groups have obtained unclassified FBI information about aspects of the CISPES investigation. One such request led to the public disclosure in January 1988 of numerous documents suggesting that, during 1983-85, the FBI had conducted a widespread counterterrorism investigation of the lawful domestic political activities of CISPES. The documents also suggested the possibility that this investigation had swept broadly to include the lawful political and religious activities of many other domestic groups. The scope of investigation reflected in the documents was far broader than the congressional oversight committees—and, as it turned out, high FBI officials—had previously been led to believe.

The Senate Intelligence Committee began a formal investigation of the CISPES and Varelli matters on February 23, 1988. The investigation sought to pursue the issues raised by the documents released by the FBI, as well as the problems in the CISPES investigation indicated by Mr. Varelli's previous statements. FBI Director Sessions had met with the Committee in closed session on February 2, 1988, to discuss the need for an internal FBI inquiry, and shortly thereafter the Committee, in consultation with the Judiciary Committee, posed detailed questions and requested pertinent FBI documents.

The Committee's investigation included a review of the 14-volume FBI Headquarters file on CISPES (over 700 documents and 3,000 pages), the 16-volume Dallas field office file on CISPES (over 1,000 documents and 4,000 pages), and the FBI Headquarters and Dallas field office administrative files on Frank Varelli (over 3,000 pages). Based on this review, additional Headquarters and field office files on related administrative matters and selected spin-off investigations were also examined. These included separate files on FBI conferences relating to CISPES and on the general subject of Salvadoran leftist activities in the United States. In response to specific Committee inquiries, the FBI Inspection Division reviewed additional files and provided further information. The Inspection Division submitted its report to the Director in May, and the Committee received the full report after the Director completed his review. The Committee was also given access to the Inspection Division's interviews with senior FBI Headquarters officials and former officials, including Director Webster.

Access to the unredacted Inspection Division report and the interviews was tightly limited within the Committee on a strict need-to-know basis. Consistent with an agreement reached with the FBI, the Committee's security officer maintained the unredacted report in secure space, with access to the report limited to Committee members and to Committee staff involved in the CISPES inquiry. No copies were made of this version of the report or any portion thereof. At the conclusion of the Committee's five day review period, the unredacted report was returned to the FBI.

On May 17, 1988, Frank Varelli and his attorney offered to discuss the FBI's CISPES investigation with the Committee. Committee staff told Mr. Varelli that the Committee would probably want to interview him in the course of its investigation. On June 7, 1988, however, another attorney representing Mr. Varelli contacted the Committee and indicated that Mr. Varelli would not be able to talk to the Committee without a grant of immunity. As a result, the Committee decided not to interview Mr. Varelli.

C. COMMITTEE HEARINGS

In addition to the examination of documents, staff interviews, and the FBI inspection report (access to which was confined to Committee Members and a limited number of Committee staff), the Committee received testimony from FBI and Justice Department officials at three hearings. Members of the Judiciary Committee were invited to these hearings because of their concurrent jurisdiction.

At a public hearing on February 23, the Committee heard testimony from FBI Executive Assistant Director Oliver B. Revell, Assistant Director William Gavin of the FBI Inspection Division, and Steven Pomerantz, chief of the Counterterrorism Section in the FBI Criminal Investigative Division. Gavin explained the Inspection Division's mandate from the Director to conduct a comprehensive and independent internal inquiry. Revell summarized the results of an initial review of the record by the Counterterrorism Section, submitted an "Interim Public Report" on the CISPES investigation, and sought to place any mistakes in the overall context of the FBI's success in combating terrorism in the United States.

On April 13, 1988, the Committee received testimony in closed session from Mary Lawton, the Attorney General's Counsel for Intelligence Policy, and Allan Kornblum, Deputy Counsel, on the role of the Justice Department's Office of Intelligence Policy and Review in the CISPES investigation. Lawton and Kornblum assisted in drafting the first FBI guidelines under Attorney General

Edward H. Levi in 1976. Their office reviewed the FBI's stated justification for the CISPES investigation three times in 1983-85. On the first two occasions, in 1983 and 1984, review unit attorneys found that justification sufficient to meet the requirements of the guidelines. On the third occasion, in June, 1985, a review unit attorney found the justification insufficient, and the FBI closed the case two weeks later. Lawton and Kornblum discussed the criteria used to review investigations, their office's role in interpreting the Attorney General's guidelines, and possible improvements in the review of FBI counterterrorism investigations.

Director Sessions testified at a public hearing of the Committee on September 14, 1988. He was accompanied by Delbert C. Toohey, Deputy Assistant Director for the Inspection Division, who directed the internal FBI investigation. The Director reported his principal findings and recommendations, based upon the Inspection Division report, as well as his personal conclusions and actions to impose disciplinary sanctions on six FBI personnel and to institute a series of policy changes and remedial measures. The Director's actions responded directly to virtually every issue identified by the Inspection Division and in the Committee's investigation.

D. OPERATING PROCEDURES

In preparation for the September hearing, the FBI and the Committee agreed upon operating procedures for determining what aspects of the CISPES investigation could be discussed in public. Such criteria were necessary because the Attorney General's guidelines, under which the CISPES investigation was conducted, are classified. These procedures represented a good faith effort to reconcile the compelling need for public knowledge and discussion of the FBI's conduct with the Bureau's strongly expressed concern that an overly broad public discussion could convey a detailed picture of the classified contents of the guidelines. It was agreed not to use sensitive "terms of art" and not to make specific references to what the guidelines authorize or restrict. This permitted discussion of the facts of specific violations or possible violations of applicable policy, but not the nexus between the facts and specific guidelines requirements (other than generalized reference to policies or standards for "predicate" or "duration" or "approval level"). The ground rules also permitted discussion of the facts of the use of specific techniques, including the extent of use, and the facts regarding each spin-off investigation and generally the techniques used therein. The same procedures have been followed in preparing this public report.

It should be emphasized that the Committee has not sought in this case the identity of FBI sources whose relationships with the FBI remain confidential. This was not the case with Mr. Frank Varelli, who has publicly acknowledged his relationships with the FBI and with the Salvadoran National Guard. Otherwise, arrangements were made to protect the confidentiality of the FBI's relationships with its sources while providing the Committee access to the information the Committee deemed necessary for its investigation of the CISPES and Varelli matters.

Finally, the Committee has refrained in the report from identifying by name current and former FBI employees other than the Director unless such individuals had heretofore been publicly identified by the FBI itself. In developing the report, it was not the intent of the Committee to assign blame to particular individuals, but rather to examine the systemic problems in the FBI's CISPES investigation that the FBI Inspection Division's report and the Committee's own investigation have identified.

PART ONE—THE FBI INVESTIGATIONS OF CISPES: A NARRATIVE ACCOUNT

INTRODUCTION

This chapter presents a narrative account of the two FBI investigations of CISPES—the criminal investigation in 1981-82 and the international terrorism investigation in 1983-85. It is based primarily upon information in the FBI Headquarters and Dallas field office files on CISPES. The narrative does not attempt to describe all the investigative activities conducted in every FBI field office which were reported extensively to FBI Headquarters and the Dallas office. Nor does it discuss in detail the FBI's relationship with Mr. Frank Varelli, described in Part Two, although there is overlap where FBI Headquarters and the Dallas office relied on Mr. Varelli's information in the second CISPES investigation. Rather the focus is upon the principal decisions made at FBI Headquarters to initiate and continue or terminate investigations, the information relied upon for those decisions, and the guidance provided to field offices for the conduct of the investigation. The key official at FBI Headquarters during most of the international terrorism investigation was the Headquarters Supervisory Special Agent in one of the international terrorism units of the Terrorism Section in the Criminal Investigative Division.

The Terrorism Section (recently renamed the Counterterrorism Section) was one of seven sections in the Criminal Investigation Division. The others were Organized Crime, Narcotics, White Collar Crime, Civil Rights and Applicants, General Crimes, and Investigative Support. The Division was headed by an Assistant Director who normally reported to the Director through an Executive Assistant Director for Investigations, but the later position was essentially vacant during the period because the incumbent was serving as Director-designate of the Drug Enforcement Administration during a lengthy delay in confirmation. In addition, a special assistant to the Assistant Director for the Intelligence Division handled issues arising under the Attorney General's guidelines for foreign counterintelligence investigations, and a special assistant in the Director's office dealt with legal and policy issues involving interpretation of the Attorney General's guidelines for domestic security/terrorism investigations.

Below the Assistant Director for the Criminal Investigative Division were two Deputy Assistant Directors, one of whose duties included supervising the work of the Terrorism Section. Within the Terrorism Section itself, headed by a Section chief, there were four units—two for international terrorism, one for domestic security/terrorism matters, and an analysis unit. Thus, the chain of command for the CISPES international terrorism investigation in 1983-85 went from the Headquarters Supervisor (and his successors in 1985) to the unit chief, Terrorism Section chief, Deputy Assistant Director, Assistant Director, and Director. The two special assistants noted above were occasionally involved on questions relating to the protection of First Amendment rights.

I. JANUARY, 1981, CISPES DEMONSTRATION REPORT

FBI Headquarters opened an information file on CISPES in January 1981 because of a report to the Washington field office from the U.S. Park Police that CISPES was planning a demonstration in Washington, D.C., to protest Salvadoran government violence, the slaying of four religious missionaries in El Salvador, and U.S. Government aid to El Salvador. An estimated 10,000 people were expected to participate, and the report gave the names and addresses of three persons "in charge" of the demonstration. The FBI's Executive Assistant Director for Investigations was informed, and FBI Headquarters disseminated the information (without the names of the three individuals) to the White House situation room, the Secret Service, the Justice Department's Emergency Programs Center, and the State Department. Nothing beyond this report and the disseminated versions was placed in the file until April 1981.

II. FOREIGN AGENTS REGISTRATION ACT INVESTIGATION, 1981–82

On April 20, 1981, the Boston field office sent FBI Headquarters a copy of an article from the April 8, 1981, issue of a publication called *The Review of the News,* which purported to describe the role of Farid Handal, brother of a Salvadoran Communist Party official, and members of the Communist Party, USA, in events leading to the formation of CISPES in 1980. The report was also sent to the New York and Washington field offices. Neither the publication nor the author of the article, John Rees, was characterized in the Boston field office report. (*The Review of the News* had close ties to the John Birch Society.[4]) Rees was also the publisher of a biweekly *Information Digest* specializing in reports on political organizations and terrorist groups.

The Rees article claimed, among other things, that "key radicals" had been "placed in top posts at the White House and in the State Department" under the Carter Administration, and suggested the possibility that "some of these policymakers were consciously striving to turn the whole of Central America over to the Communists." The article cited documents allegedly captured from the files of the Salvadoran Communist Party and a terrorist group and "made available by the Reagan State Department." One of these documents was said to be a report by Farid Handal on his visit to the United States in 1980 during which he purportedly encouraged Communist Party, USA, members to support the Marxist revolutionary movement in El Salvador. The article asserted without documentation that CISPES was composed of "groups initiated by the Communist Party, USA, the U.S. Peace Council, and Farid Handal" with important support from "the Religious Task Force on El Salvador, set up by Catholic clerical activists [and] from groups including Network, the U.S. Catholic Conference, the Maryknolls, and the Washington Office on Latin America." Rees called on the Justice Department to take action against CISPES "as an unregistered foreign agent." FBI Headquarters filed the Boston field office report and took no further action.

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[4] SSCI Hearings September 14, 1988, p. 131. See also Washington Post articles of August 22, 1981 (Mary Battiata. "Congressman's Foundation Targets Communist 'Threat' "), and August 3, 1978 (George Lardner, Jr., "Worldwide Effort Being Launched to 'Destabilize' CIA").

On June 25, 1981, the Criminal Division of the Justice Department sent the FBI a copy of the alleged Handal trip report, along with an English translation, and asked the FBI to furnish "all information in your records relating to CISPES and Farid Handal" so that the Department could "assess any possible violation of the Foreign Agents Registration Act . . . and other statutes." The FBI replied on August 25, 1981, with a summary of classified information. That information did not directly corroborate the alleged captured document, but did indicate that Handal had a prominent role in the Marxist revolutionary movement in El Salvador and had contacts with U.S. citizens sympathetic to that cause.

On August 27, 1981, the Justice Department's Criminal Division sent a memorandum requesting that the FBI "conduct an appropriate investigation to develop sufficient facts to determine whether CISPES is required to register under the Foreign Agents Registration Act of 1938, as amended." The Justice Department gave the FBI a copy of a letter it had received from CISPES denying that the group was acting as an agent of any foreign principal. Two officials of the CISPES National Office wrote the Justice Department on June 24, 1981, that CISPES was formed to oppose "U.S. involvement in El Salvador because our government continues to provide military and economic aid to a regime which survives by murdering innocent peasants, workers, intellectuals, and clergy." They added,

> CISPES maintains contact with the Frente Democratica Revolucionario (FDR) of El Salvador as we view this broad based political formation as the legitimate representatives of the Salvadoran people and as a crucial source of information for our work. Part of CISPES' work is to urge the American government to deal seriously with the FDR as do many other governments around the world. CISPES exchanges views with the FDR, but on no occasion has the FDR sought to impose its views on CISPES; nor would CISPES permit them to if such a situation were to arise.

In addition to this letter, the Justice Department advised the FBI that the purported Farid Handal document previously sent to the Bureau had been "provided by the Department of State." The FBI's CISPES file does not reflect any Justice or State Department characterization of the nature or reliability of the alleged captured document or any effort to evaluate its *bona fides*. The Inspection Division was unable to find any information directly corroborating the statements in the purported Handal document.[5]

On September 3, 1981, FBI Headquarters instructed the Washington field office (WFO) to take charge of a Foreign Agents Registration Act (FARA) investigation of CISPES "in order to comply with the Justice Department's request." Four other field offices, including the Dallas field office, were instructed to provide WFO "with pertinent information from your files with regard to this matter." A copy of the Justice Department communication was enclosed.

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[5] SSCI Hearings. September 14, 1988, p. 131.

Three months later, on December 2, 1981, the Washington field office reported that its investigation had "not uncovered firm evidence to contradict CISPES' claim of not acting as an agent of the FDR or any other foreign principal." While some people in the Salvadoran community in the United States believed "that CISPES does financially support the FDR in their war in El Salvador," they could not "provide any real evidence to substantiate the suspected FARA violation." Its publications "confirmed that CISPES does verbally support and encourage FDR," but there was insufficient evidence to substantiate a FARA violation. Another field office reported similar results on December 12, 1981.

In response to a request from FBI Headquarters, the Washington field office submitted a more detailed report of the FARA investigation results on January 25, 1982. These findings, along with additional classified information from another United States Government agency which conducts intelligence investigations, were set forth in a memorandum from FBI Headquarters to the Justice Department on February 23, 1982. The memorandum stated that several people had told the Bureau that CISPES was overtly raising money to assist Salvadoran refugees in the United States and El Salvador and to support political activities in the United States. They also had said that CISPES supported the political aims of the Salvadoran FDR and its allied guerrilla movement, then known as the Frente Farabundo Marti Para La Liberacion (FPL). Although there were some "indications that the money collected by CISPES may be finding its way to the FDR," the FBI said it had "no real substantiated information linking CISPES financially to the FPL/FDR, or proof that CISPES is acting on behalf of or at the direction of the FPL/FDR or any other foreign principal." Thus, the FBI closed its investigation. After reviewing this memorandum, the Justice Department's Criminal Division agreed with the FBI's conclusion but told the FBI to report back if it learned more.

III. International Terrorism Investigation, 1983-85

A. EVENTS LEADING TO INITIATION

Before the FBI investigated CISPES under the Foreign Agents Registration Act in 1981, the FBI had opened separate international terrorism investigations of alleged support from other elements in the United States to Salvadoran revolutionary guerrilla activity, including allegations of terrorist training.

During 1982 the FBI received intelligence reports of contacts between persons in the United States and members of the Salvadoran Marxist revolutionary movement, including one report of passage of money abroad. By late 1982 the FBI had opened several international terrorism investigations based on information from sources other than Frank Varelli indicating involvement with Central American terrorism. In November 1982 a review of these investigations and the intelligence reporting led the Supervisory Special Agent in the FBI Headquarters Terrorism Section (who shall be referred to as the Headquarters Supervisor) to conclude that additional individuals and groups "may be involved in international terrorism due to the numerous groups currently trying to overthrow the El Salvadoran Government." The Headquarters Supervisor commissioned an "in depth" assessment "which will demonstrate the interrelationship between the various individuals . . . and the organizations they represent. It will also be necessary to show why these individuals or organizations are believed to be involved in international terrorism."

The resulting review listed five FBI international terrorism investigations involving U.S. persons based on intelligence reports of contact with Salvadoran exile "leftists." As submitted on January 4, 1983, the assessment described the Farabundo Marti National Liberation Front (FMLN) and the Revolutionary Democratic Front (FDR) as the principal Salvadoran revolutionary groups. The FMLN coordinated "armed insurgent activities," and the FDR coordinated political support activities. In March, 1982, the World Front for Solidarity with El Salvador had been formed in Mexico by more than forty groups from both Communist and non-communist countries. However, the assessment made no reference to CISPES in the United States or to any individual described as being associated with CISPES. The Headquarters Supervisor disseminated this report to seven field offices, including the Dallas office, with a request that "recipients, through sources and investigation, review and evaluate above information. Advise FBIHQ of conflicting information and also opinions of the above."

In response to the request to check field sources, the Dallas field office advised FBI Headquarters on January 14, 1983, of assertions by a confidential source described as having "provided reliable information in the past." The source was Frank Varelli. The Dallas report disputed parts of the previous assessment of political leaders and organizations in El Salvador and then made the following statement:

> Source stressed the fact that the greatest threat posed to the United States in regards to Central America is in the form of the CISPES groups throughout the United States.
>
> Dallas has reviewed material collected over two years from source and provided the following general conclusions:
>
> CISPES, Coalition in Support of [sic] the People of El Salvador, is an organization that consists of groups scattered all over the United States, that work independently and in solidarity with the subversion of El Salvador, under a Marxist-Leninist doctrine, directed by the FDR-FMLN.
>
> CISPES consists of more than 250 local groups with 800 plus organizations. CISPES groups are divided into one national office, and six regional offices:
>
> National Office—Washington, D.C.
> Central Region Office—Chicago, Illinois
> South Central Region—Austin, Texas
> Southwest Region—Los Angeles, California
> New England Region—Boston, Massachusetts
> Eastern Region—New York, New York
> Southeast Region—Coral Gables, Florida
>
> The leadership of CISPES in the U.S. comes directly from the FDR-FMLN.
>
> The FDR is the union of the CRM with the MNR of Manuel Ungo. The CRM (Revolutionary Coordinator of the Masses) unites five political-paramilitary Marxist groups of El Salvador. . . . The FMLN is the union of the five Communist guerrilla groups of the subversion of El Salvador. . . .
>
> When CISPES was created by the FDR-FMLN in the United States, the leaders had found safe refuge in the countries of Mexico and Nicaragua. The Soviet Union is directing all the Marxist-Leninist subversion in Central America, is also directing the well-prepared efforts of CISPES in the United States. Orders emanate from Moscow to Cuba. From Cuba, the orders are transmitted to the

> Sandinista commanders in Nicaragua, who in turn transmit them to the commanders of the FDR and FMLN. The FDR-FMLN commanders then give their orders to CISPES national headquarters.
>
> Roman Mayorga Quiroz, a member of the FDR diplomatic commission, in a speech on April 29, 1982 in Mexico City, advised, "We have created 180 groups of solidarity in the United States. If public opinion/was responsible for the defeat of the U.S. in Vietnam, let us use it again, and Reagan will turn El Salvador into our hands."

The Dallas office sent this report to six other field offices as well as to FBI Headquarters, and the Headquarters Supervisor forwarded it to the author of the prior assessment. The Dallas report gave no explanation of how the source (Mr. Varelli) was in a position to know what he asserted about CISPES.

The author of the prior assessment produced a more detailed report dated January 24, 1982, that sketched the political history of El Salvador, including the emergence of right wing "death squads" and the use of terrorism and guerrilla warfare by left wing revolutionary groups, based on information from other elements of the U.S. intelligence community. It made no reference to CISPES or to the Dallas report based on Mr. Varelli's allegations.

B. THE MARCH, 1983, CONFERENCE

On February 3, 1983, the Terrorism Section Chief requested approval to hold a 3-day conference at the FBI Academy with representatives from twelve offices, including Dallas. The request, drafted by the Headquarters Supervisor, cited the "accumulated information from sources and investigation indicating a surge of El Salvadoran terroristic activities in the United States. Sources have furnished information showing financial support coming from front organizations in the United States and discussions by these terrorists to [sic] attack military bases in the United States." The request provided no supporting details and made no reference to CISPES, but stated that one of the purposes of the conference was "to develop understanding of the organizations involved and thereby determine the targeting of organizations. . . ." The request was approved by the Deputy Assistant Director of the Criminal Investigative Division. In subsequent guidance to the participating offices, dated February 18, 1982, the Headquarters Supervisor listed the following topics for discussion:

> 1. Organization and structure of various groups comprising the known El Salvadoran leftist movement.
> 2. Identifying organizational structure of groups in the United States suspected of furnishing support and assistance to the El Salvadoran leftists.
> 3. Furnishing of direction, support, and assistance by [foreign] governments to the El Salvadoran leftists, both in the United States and El Salvador.
> 4. Targeting of organizations and individuals supporting Central American terrorism in the United States.
> 5. Development of uniform acronyms for the various organizations.
> 6. Manpower and other resource needs.

All the offices, "particularly Dallas and [another office]," were asked to define how the leftist groups in El Salvador "are linked and how they communicate. What is their command structure?" The two offices and the author of the initial January 1983 assessment were asked to discuss the composition of the FDR and its interaction with other Salvadoran leftist groups, as well as foreign government involvement "in El Salvadoran leftist activities." The two offices were also told to prepare "to discuss the organizations which are believed to be supporting Central American terrorism which are active in the United States and how they interrelate to the groups in El Salvador."

On February 14, 1983, the Dallas office advised FBI Headquarters that its representatives to the conference would be Special Agent Daniel J. Flanagan (Mr. Varelli's case agent) and the Supervisory Special Agent in charge of the Foreign Counterintelligence Squad in the Dallas office. The Dallas office proposed that Mr. Varelli be invited to lecture at the conference because he was "possibly the most knowledgeable individual in the United States regarding El Salvadoran terrorism" with an "in-depth knowledge of all aspects" of the history, leadership, group structure, and goals of "the numerous terrorist organizations." The Headquarters Supervisor agreed and scheduled Mr. Varelli to appear only for the initial 4-hour conference session on "the historical and current organizational structure of the El Salvadoran leftist movement." The Headquarters Supervisor coordinated the Dallas source's appearance with an experienced official in the FBI Headquarters Intelligence Division and obtained the concurrence of the other FBI field office with a lead role at the conference.

The Headquarters Supervisor noted for the record that the Dallas source (Mr. Varelli) "has furnished the majority of information upon which our current understanding of the organizational structure of the El Salvadoran Leftist Movement is based. This existing structure is complicated and a greater understanding is needed to appropriately understand and effectively investigate their activity. This source is from El Salvador and has a brother currently residing in El Salvador. The brother has access to a great deal of current information concerning the Leftist Movement as it is known by the current El Salvadoran Government."

This note indicates that, when Mr. Varelli was invited to the Quantico conference, the Headquarters Supervisor knew that Varelli's remarks were likely to reflect the reporting of a sub-source who was providing information "known by the current El Salvadoran Government." No mention was made of any participation by, or input from, the specialists in other departments or elements of the U.S. intelligence community with principal responsibility for collection and analysis of information on the Salvadoran leftist insurgency.

The syllabus used at the conference states that the five sessions covered the following topics:

> (1) "Organizational Structure of El Salvadoran Leftist Movement—This period will be utilized to discuss the overall picture of the groups, both in El Salvador and in other countries, which are involved in, and/or support, the guerrilla effort to overthrow the current El Salvadoran Government. Included will be the political and military interaction of the various groups and their leaders. Also included will be contact or command links between the various groups, particularly those in the United States. Dallas will lead in this discussion relying on their source who will be present."
>
> (2) "Specific relationships between El Salvadoran groups and those in the United States, including leaders, methods of communication, and political affinities. Some historical background of El Salvadoran leftist movement. Specific involvement and direction of El Salvadoran groups with U.S. groups or El Salvadoran groups in the United States. Dallas, [another office] and [the author of the initial January assessment] will lead in this discussion."

(3) "This period will be utilized to discuss other governments' involvement in El Salvadoran terrorism. Included will be information and substantiating facts indicating involvement of the USSR, Cuba, Libya, and Nicaragua in the El Salvadoran leftist movement. Also included will be discussions of what directions are coming from these countries to the groups in the United States both through the leftist movement and directly to the groups. Dallas, [another office] and [the author of the initial January assessment] will lead these discussions."

(4) "This period will be used to determine what organizations and individuals should be targeted for investigation. This includes both El Salvadoran organizations active in the United States and U.S. organizations supporting the El Salvadoran guerrillas. Discussions will also include targeting and obtaining of assets, use of [certain techniques], etc."

(5) "In this session, we will discuss the acronyms which will be used in these investigations, resources necessary to achieve the goals set on [the previous day] and other details of projected investigative activity."

An organizational diagram of the "El Salvadoran Leftist Movement" distributed at the conference specified "command, directional links" between the major Salvadoran guerrilla organizations and CISPES—using terminology identical to the Dallas report of Mr. Varelli's allegations in January 1983. Also distributed were leaflets and fliers reflecting the political activities of CISPES and other groups associated with CISPES in opposing U.S. involvement in El Salvador and favoring the Salvadoran leftist cause. The only FBI Headquarters officials attending the conference were the Headquarters Supervisor and the chief of his international terrorism unit in the Terrorism Section.

One participant in the conference was an FBI official with experience in dealing with Central America and other elements of the U.S. intelligence community. Shortly after the conference, he advised the Headquarters Supervisor, the Dallas office, and nine other offices of a new source that the FBI could use to obtain information on activities in the United States "supportive of leftist terrorism in El Salvador and foreign direction of such activities." He suggested that the Dallas office "use caution in directing source [Mr. Varelli] relative to source's direct contacts with Salvadoran intelligence and law enforcement authorities in El Salvador to avoid . . . confusion. . . ." This message indicated that at least one conference participant recognized that Mr. Varelli had direct contacts with Salvadoran authorities and saw pitfalls in that relationship. Those concerns, however, were not reflected in subsequent FBI communications during 1983, and they appear to have been completely ignored by FBI Headquarters and the Dallas field office.

The Headquarters Supervisor reported the results of the conference to his superiors in a memorandum dated March 17, 1983, which was initialed by the unit chief and section chief. While formally addressed to the Assistant Director, the memorandum does not appear to have left the Terrorism Section. The Headquarters Supervisor said he "anticipated that at least three new . . . investigations will be opened on organizations in the very near future." The first was a Salvadoran leftist group primarily active abroad. The second was CISPES, described as "a U. S. organization which has substantial contacts with the guerrilla organizations of El Salvador to which it furnishes money, weapons and other support and from which it receives direction." The third was a group active in one U.S. city which was said to be "directly connected to the guerrilla organizations in El Salvador," to be assisting "guerrillas who have immigrated legally or illegally to the United States," and "to be furnishing support to the guerrillas." In addition, the Headquarters Supervisor anticipated "at least five new . . . investigations on individuals . . . believed to be directly involved in aiding and abetting the El Salvadoran guerrillas." On the issue of resources, the report stated:

> Various [Field Office] representatives noted that since the El Salvadoran guerrillas are not known to have committed any terroristic actions in the United States, it is difficult for Special Agents in Charge (SACs) to commit the resources necessary to fully address these matters. In many of these offices, the FBI's current thrust against illegal drug activities takes precedence over terrorism investigations where no violence has occurred in the United States. The representatives requested an expression of the importance of terrorism, El Salvadoran terrorism specifically, at the next SAC conference to guide the SACs in prioritizing these matters. A statement of this type would certainly be in keeping with the policy of the current Administration regarding the El Salvadoran situation.

Neither this memorandum nor any other information provided to the Committee indicates whether or not this recommendation was implemented. As noted above, the document apparently remained in the Terrorism Section. As discussed later, the Headquarters Supervisor sent a message to field offices in June, 1983, stressing the importance of these investigations to the U.S. Government and the need to assign adequate resources.

The Headquarters Supervisor prepared a separate communication on the conference to all FBI field offices, dated March 29, 1983, with copies to each Executive Assistant Director, each Assistant Director, the Special Assistant to the Director, and the two Deputy Assistant Directors for the Criminal Investigative Division. The message was initialed by the Assistant Director for the Criminal Investigative Division. It stated that as a result of the conference, the FBI was "intensifying its efforts in investigating the activities of El Salvadoran guerrilla organizations in the United States and the activities of U.S. organizations which are aiding and abetting the El Salvadoran guerrillas from the United States." Because new investigations were likely, all offices were furnished summary information "for background and investigative assistance." This amounted to a brief description of various Salvadoran leftist and guerrilla organizations, including the FDR and FMLN, and the following statement on outside support:

> The guerrillas are being supported in the United States by the Committee in Support of [sic] the People of El Salvador (CISPES). This support is believed to take the form of money, weapons, and other resources necessary to the guerrilla activities.
>
> There is also evidence that the guerrillas are being supported and directed, to some extent, by the Soviet Union, Cuba, Nicaragua, Libya, and the Palestine Liberation Organization. It is anticipated that [an investigation] will be instituted on the CISPES. CISPES has many chapters and branches throughout the United States which often utilize front names rather than CISPES.
>
> Additionally, some of the guerrilla organizations have infiltrated members, legally and illegally, into the United States. Some information has indicated that the guerrilla organizations have discussed terroristic activity in the United States to embarrass the U.S. Government and protest U.S. support for the current El Salvadoran Government.

All FBI field offices were asked to "furnish any information regarding the above to FBIHQ to the attention of the Terrorism Section." Based on the materials reviewed by the Committee, the Assistant Director's approval of this communication appears to be the highest level of contemporaneous knowledge within the FBI regarding the planned initiation of the CISPES international terrorism investigation.

C. INITIATION OF THE INTERNATIONAL TERRORISM INVESTIGATION

On March 15, 1983, the New York field office advised FBI Headquarters and ten other offices, with reference to the conference on El Salvadoran terrorism, that it would contact its sources to determine if additional information could be developed concerning CISPES.

On March 21, 1983, the Dallas field office sent to FBI Headquarters and ten other offices, with reference to the El Salvadoran terrorism conference, a report setting forth facts to support an international terrorism investigation of CISPES, based on suspicion of "providing financial aid to members of various terrorist groups in El Salvador, and possibly providing aid and cover to members of these terrorist groups in the United States." The information came entirely from CISPES publications endorsing the Salvadoran revolutionary movement and from Frank Varelli, described as a "confidential source who has provided reliable information in the past." The report said Mr. Varelli was "an active member . . . readily accepted by CISPES" and had been "tasked to lead a committee responsible for compiling various mailing lists and to provide security during local chapter meetings." The report cited Mr. Varelli as stating that funds collected by CISPES groups were sent to an intermediary in Mexico who in turn delivered the funds "to guerrillas in El Salvador," and CISPES had "created an underground movement to smuggle illegal aliens into the United States, and provides false identifications, i.e., social security cards, driver's license, and green cards." In addition to open meetings, Mr. Varelli claimed, CISPES held "closed door meetings . . . attended by approximately 15 individuals at the Dalas chapter." Mr. Varelli said he attended one such meeting where the coordinator of a "research committee" was delegated to "make detailed maps and reports on various sites throughout Dallas, including government offices and emergency services response time to these locations." Mr. Varelli also said such meetings were "often attended by members or supporters of terrorist groups in El Salvador." The report repeated Mr. Varelli's earlier allegation that "orders are sent from El Salvador to Mexico; Mexico to National Office of CISPES in Washington, D.C.; and then to various chapters throughout the United States."

On March 30, 1983, FBI Headquarters sent a message to eleven FBI field offices, including New York and Dallas, referencing the above reports and authorizing an international terrorism investigation of CISPES with Dallas as "office of origin" (the field office responsible for coordinating the investigation). The FBI Headquarters message summarized Mr. Varelli's allegations, paraphrasing his statement on "orders . . . from El Salvador" as an assertion that "CISPES is directed by the FDR and FMLN." In addition, other sources were said to indicate that CISPES members "maintain contacts with" hostile intelligence officers and representatives of Middle Eastern terrorists." The message concluded with the following guidance:

> It should be noted that many of the members of CISPES and/or its subgroups may not be aware that their fund raising activities, the subsequent funds, and other support which they furnish to CISPES is directed by CISPES officials to support the terroristic activities of the El Salvadoran leftist terrorists. This investigation is not concerned with the exercise of rights guaranteed by the United States Constitution, but rather, with the involvement of individuals and the CISPES organization in international terrorism as it affects the El Salvadoran Government, and the collection of foreign intelligence and counterintelligence information as it relates to the international terrorism aspects of this investigation. Due to the involvement of individuals of high-public visibility, church organizations, etc., it is incumbent that this investigation be closely coordinated with FBIHQ. Therefore, all pertinent details in this investigation or questions of investigative interest should be forwarded to FBI Headquarters for appropriate decisions. Based on the sensitivity of this investigation, they should ensure that agents handling this investigation are thoroughly familiar with the Attorney General Guidelines for foreign counterintelligence as they apply to international terrorism investigations. Any questions should be directed to the Terrorism Section, attention [Headquarters Supervisor].

This message was drafted by the Headquarters Supervisor and approved by his unit chief and the Acting Terrorism Section Chief.

On April 7, 1983, the Dallas field office proposed additional cover support for Frank Varelli's infiltration of the Dallas CISPES chapter. This was approved by FBI Headquarters in a message dated April 12, with the following guidance similar to the initial authorization for the CISPES investigation:

> Dallas should instruct this asset that he is only to report on the leaders, or other persons about whom he has knowledge, who are knowingly, repeat, knowingly aiding and abetting the Salvadoran guerrillas with monetary and other support, or are in contact with Salvadoran leftists. It should be stressed to this asset that he is not to report on activities of individuals within this organization concerning their exercise of the rights guaranteed by the Constitution of the United States. As it has been previously noted [sic], many of the members of CISPES contribute, based upon political ideology, and are unaware that their support monetarily or otherwise goes to the aid of the Salvadoran guerrillas conducting terroristic activities in El Salvador. The key to investigation of members and leaders of CISPES are [sic] those individuals who are aware that the support given by CISPES goes to aid in the above terrorist activities.

The Headquarters Supervisor, who drafted this message, noted for the record that this guidance was recommended by the special assistant to the Assistant Director for the Intelligence Division, who was responsible for advising that division on matters of interpretation of the Attorney General guidelines. Subsequently, the special assistant in the Intelligence Division was occasionally consulted on questions about the applicability of Attorney General guidelines to proposed steps in the CISPES investigation in Dallas and in one of the eleven other field offices that received the initial FBI Headquarters authorization. This limited involvement by the Intelligence Division was phased out after the first three months of the investigation, although some consultation with the special assistant on specifc actions did occur in 1984.

D. EARLY EXPANSION OF THE CISPES INVESTIGATION

The first field office beyond the initial eleven to receive FBI Headquarters authorization to investigate CISPES locally was in Norfolk, Virginia. Referring to the FBI Headquarters communication of March 29, 1983, to all field offices on the El Salvador terrorism conference, the Norfolk office submitted to FBI Headquarters a report dated April 7, 1983, on a public meeting of CISPES at Old Dominion University where approximately 100 people attended a presentation by Alejandro Molina Lara, a Salvadoran leftist labor leader. The Norfolk office asked whether or not any investigation of the local CISPES group and/or its members should be conducted. FBI Headquarters responded with a message on April 21, drafted by the Headquarters Supervisor, authorizing the Norfolk office to investigate CISPES and enclosing the FBI Headquarters instructions of March 30, 1983, that initiated the investigation. While stressing the need to follow the "stringent guidelines" in those instructions which required close coordination with FBI Headquarters, the April 21 FBI Headquarters message also directed the Norfolk office to "coordinate all investigations with Dallas, office of origin in captioned case."

On May 23, 1983, the Dallas office asked FBI Headquarters to approve a request for long distance telephone toll records for the local CISPES chapter. The justification stated:

> CISPES is a well established, well funded organization which totally supports the FDR/FMLN, the political and paramilitary terrorist fronts in El Salvador. CISPES, who [sic] has gained a massive membership is suspected of supplying funds to terrorist groups in El Salvador, and of providing refuge to Salvadoran illegals, some of whom, according to [source Mr. Varelli] are members of terrorist organizations. . . .
>
> Current investigation is directed at establishing extent of CISPES support of terrorism in El Savador, and potential of committing terrorist operations in the United States. Examination of their long distance toll records may provide valuable insight into such contacts, as well as identification of individuals supporting terrorism.

The Headquarters Supervisor endorsed this request and repeated the undocumented assertion that "CISPES is a well-funded organization supporting the FDR/FMLN." Approval was granted by the Unit Chief and the Acting Terrorism Section Chief, with copies to the section chief, another official of the section, and a control file for toll record requests. Although the letter to the local telephone company bore the signature of the Assistant Director, it was signed by the Acting Section Chief. Documents issued under the name of the Assistant Director were frequently approved at lower levels.

On June 30, 1983, the San Francisco, California, field office (which was not one of the 11 original offices) reported to FBI Headquarters information from other law enforcement agencies on local CISPES plans for a demonstration at the Concord Naval Weapons Station, including a possible blockade. FBI Headquarters told the San Francisco office to re-transmit the report to the eleven field offices initially conducting the CISPES investigation. FBI Headquarters also instructed San Francisco to send leads to those offices "to contact sources within the CISPES organization to obtain any information concerning the planned demonstration at the CNWS" and to "provide appropriate coverage to the planned demonstration. . . ." These instructions, drafted by the Headquarters Supervisor with copies to the unit chief and section chief, did not enclose copies of the original authorization. As quoted above, that authorization had included "strict guidelines" which stressed that the CISPES investigation was concerned "with the involvement of individuals and the CISPES organization in international terrorism as it affects the El Salvadoran Government." Such guidance was not provided when FBI Headquarters told the San Francisco field office to investigate a domestic CISPES protest demonstration. The San Francisco office asked the other offices to contact their sources for "any information regarding demonstration or proposed travel of

CISPES members to attend proposed demonstration," and San Francisco assured FBI Headquarters it would "provide appropriate coverage" of the demonstration.

A more substantial expansion of the CISPES investigation occurred on July 7, 1983, when the Dallas field office sent to 17 other offices a list of telephone numbers called from the local CISPES chapter phone. Eight of the 17 offices had not received the original authorization. These offices were told for their information that CISPES "is a coalition of groups whose aim is to obtain international support of the leftist groups in El Salvador and to procure funds for guerrilla forces in El Salvador." The 17 offices were "requested to identify subscribers of numbers" on the list and to search office file indices "to determine if the individuals are known to be affiliated in any manner with" CISPES. It was "left to the discretion of recipients" to decide whether to open investigations on the subscribers. This message was approved by the Dallas/Supervisor, and a copy went to the Headquarters Supervisor. As with San Francisco, the 8 new offices were not given the "strict guidelines" in the original authorization. Moreover, this use of telephone toll record data was not limited by any constraints similar to the FBI Headquarters instructions of April 12, 1983, recommended by the special assistant in the Intelligence Division, to restrict reporting on persons not "knowingly aiding and abetting the Salvadoran guerrillas."

On July 25, 1983, the Dallas field office sent to 24 field offices another list of telephone numbers called from the local CISPES chapter, with those offices again given discretion to open investigations of subscribers with no guidance or constraints. A copy was sent to FBI Headquarters. The July 7 and July 25 communications required these 24 offices to identify subscribers to a total of 86 different phone numbers, review field office indices on each of them, and determine whether to initiate investigations.

E. CONCERNS ABOUT DOMESTIC VIOLENCE AND DEMONSTRATIONS

On April 26, 1983, a bomb exploded at the National War College at Fort McNair in Washington, D.C., breaking glass but causing no injuries. On April 28, an unidentified person contacted a local radio station and said that "we are in solidarity with the people of El Salvador and have taken action because people are being trained at the NWC." The caller claimed to speak for the "Armed Resistance Unit." FBI Headquarters provided this information to ten field offices and noted that CISPES representatives had assembled in Washington for a demonstration during a presidential speech to Congress on April 27. The FBI Headquarters message described CISPES as a "U.S. organization which supports the activities of the Salvadoran terrorists and furnishes them with funds and possibly with military supplies."

In addition to the phone call, a lengthy written "Communique from the Armed Resistance Unit" announced that the attack on Fort McNair "was taken in solidarity with the growing liberation movements in El Salvador, Guatemala, and throughout Central America, and with the Socialist Government of Nicaragua." Several paragraphs expressed support for the FMLN/FDR and denounced U.S. actions in El Salvador. (The Appendix to this Report contains the texts of the communiques associated with this and later bombings.) On May 12-13, 1983, similar bombings occurred at an Army Reserve Center in Uniondale, N.Y., and a Naval Reserve Center in Queens, N.Y.

The Washington field office (WFO) reported to FBI Headquarters and 14 other offices on June 29, 1988, information about plans by an Ad Hoc Committee for a July 2 Emergency Mobilization to hold a march and demonstration in Washington, D.C., during the July 2-4 period. WFO advised "that these planned demonstrations could have CISPES involvement" because of the group's opposition to U.S. activity in Central America and its association with other groups under investigation. On the same day, FBI Headquarters sent a message to 12 field offices that stressed concern about CISPES demonstrations and possible links to domestic violence. It said "previous information [from Mr. Varelli in Dallas] has shown that CISPES is collecting intelligence information in the United States concerning emergency service response time to various local government and federal government buildings." It then went on to assert that another source "has furnished information showing explicit direction being given to CISPES in the United States by the Nicaraguan government," including instructions on "when and where demonstrations are to be held." The heads of the 12 offices were advised that more investigations would be authorized and additional manpower required. The FBI Headquarters message emphasized "that the events occurring within Central America, particularly El Salvador and Nicaragua, are of key importance to the U.S. Government. The terrorism occurring within Central America is strongly supported by groups within the United States; also, the groups involved in the Central American terrorism have cells in the United States which may have already begun terroristic activities in the United States by the bombings of the War College at Fort McNair, Washington, D.C., and the Navy and Army Reserve Centers in the New York area."

The statement in this message about Nicaraguan government direction to CISPES in the United States could not be documented in pertinent FBI files. A field office report on CISPES, dated August 19, 1983, did contain information from a source about contacts and communications between Nicaraguan officials and a local CISPES chapter, but only one example was cited where a Nicaraguan official "called for" demonstrations on a particular issue. The report did not say whether such demonstrations occurred.

On June 30, the Dallas field office reported to FBI Headquarters and 10 other offices on plans by the local CISPES chapter to participate in a counter march against a scheduled Ku Klux Klan march in Dallas on July 16. The Dallas report was disseminated to senior FBI Headquarters officials with a note drafted by the Headquarters Supervisor summarizing the report and stating that CISPES was the subject of an FBI investigation and that the Dallas office had been "instructed to provide appropriate coverage to this demonstration based on the possibility of violence." Director Webster initialed this note. The Dallas field office copy of the FBI Headquarters instructions indicated in handwriting that FBI Headquarters advised by phone that physical and photographic surveillance as well as asset coverage were permissible for this purpose.

On August 18, 1983, a bomb exploded at the U.S. Navy Yard in Washington, D.C. According to WFO, a caller identifying with the Salvadoran FMLN claimed credit for the bombing. A lengthy written "Communique from the Armed Resistance Unit" declared that the Navy Yard was attacked "in solidarity with the revolutionary struggles of the people of Central America and the Caribbean." It denounced U.S. actions in El Salvador, Honduras, Nicaragua, Libya, and Lebanon.[6] On August 21, 1988, a similar bombing occurred at a National Guard Armory in the Bronx, New York. After the August 18 bombing, WFO advised FBI Headquarters and 9 field offices that credit for the earlier April bombing at Fort McNair had been claimed by "the Armed Resistance Unit in solidarity with the FMLN/FDR."

On August 22, CISPES held a demonstration at Fort McNair in Washington, D.C., where three arrests were made for blocking an entrance. The WFO report on plans for this demonstration was disseminated to senior FBI Headquarters officials, along with a note referring to the fact that CISPES was the subject of an investigation. Director Webster initialed this note. After the demonstration, another note went to senior FBI Headquarters officials and was initialed by the Director. It stated again that CISPES was under investigation and said WFO would conduct investigations of the three individuals arrested at Fort McNair. Citing a WFO supervisor's report that other demonstrations were planned for many cities on November 12, 1983, to protest U.S. activities in Central America, the note advised senior FBI Headquarters officials, "The Terrorism Section will monitor this situation and take appropriate action". FBI Headquarters and Dallas field office CISPES files contain no reports of violence at any of the CISPES demonstrations around the country in the summer of 1983.

In September 1983 the Dallas field office proposed the use of specialized resources in the CISPES investigation. When FBI Headquarters turned down the request on practical grounds, the Dallas office argued for its position by citing information from its source (Mr. Varelli) "that CISPES nationwide is already making plans to disrupt the Republican National Convention to be held in Dallas, August, 1984". Thereupon, the Dallas request was approved. In a message dated September 30, the Headquarters Supervisor then asked the Dallas office for "all details of this information." In its reply dated October 6, 1983, the Dallas office stated that its source (Mr. Varelli) "advised he received CISPES literature recently, and included were a list of topics to be discussed at their next meeting. Included on the list was the 1984 convention. No further details are available at this time." This message was initialed as read by the Headquarters Supervisor and his unit chief. FBI Director Sessions concluded that such embellishments should have alerted Field office and Headquarters supervisor that Varelli's reliability was suspect.

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[6] See the Appendix for the text of this communique.

The day after the Dallas office sent this reply, an FBI Headquarters message drafted by the Headquarters Supervisor advised 12 field offices, "Information has been received that CISPES may be planning to disrupt the Republican National Convention to be held in Dallas during August, 1984". FBI Headquarters also advised that CISPES was planning demonstrations in Washington for November 12, 1983. The FBI Headquarters message asked the 12 offices to have their sources attend a national CISPES conference in Chicago on October 15-16, 1983, and report any discussions "particularly in closed high level group meetings regarding the plans for the above operations and perhaps other actions". The FBI Headquarters message made no reference to interest in foreign direction and control of CISPES or financial support by CISPES to Salvadoran leftist guerrilla terrorism, which were the rationale for opening the investigation.

F. INITIAL JUSTICE DEPARTMENT REVIEW

An experienced senior attorney in the Justice Department's Office of Intelligence Policy and Review (OIPR) reviewed an FBI letterhead memorandum (LHM) on the CISPES investigation on September 9, 1983, and responded to the FBI by checking the box beside the following statement in a form memorandum: "The facts as reported therein satisfy the requirements of the Attorney General's Guidelines." The FBI report reviewed by the OIPR attorney was submitted to FBI Headquarters by the Dallas field office on June 22, 1983. OIPR officials testified that such LHMs were reviewed by OIPR attorneys in batches at intervals of one or two months.[7] The FBI Inspection Division found that before such LHMs were disseminated to the Justice Department review unit, they were not reviewed at FBI Headquarters by either the Headquarters Supervisor supervising the case in the Terrorism Section or the special assistant in the Intelligence Division whose office routinely transmitted to OIPR such LHMs on investigations conducted under the Attorney General's Foreign Counterintelligence Guidelines.

The LHM stated that the investigation was based on information furnished to the Dallas field office "the CISPES is an organization that consists of groups throughout the United States that work independently and in solidarity with the subversion elements of El Salvador, directed by the FDR. Funds collected by CISPES are sent to Mexico, and on to the guerrilla forces in El Salvador. Because of their sympathy to leftist groups, CISPES has created an elaborate system in the form of sanctuaries, to support and aid illegal El Salvadoran refugees, some of whom are members of terrorist groups themselves."

Some of the information in the LHM came from sources other than Frank Varelli, dating as far back as early 1981, and provided general indications of financial and military support for the Salvadoran revolutionary movement from elements in the United States not connected to CISPES nationally or in Dallas. Information from the Los Angeles, California, field office in May, 1983, described peaceful CISPES demonstrations favoring the FMLN/FDR cause. The LHM also cited the Fort McNair bombing in May, 1983, and the report that a caller to a radio station claimed credit and said "we are in Solidarity with the People of El Salvador, and Guatemala. . . ."

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[7] SSCI Hearings, April 13, 1988, p. 83.

The remainder of the information in the LHM came from Dallas source Varelli. The LHM stated (1) that Dallas CISPES leaders told the source they had an "elaborate underground system" for illegal Salvadoran immigrants, (2) that "CISPES has also been very successful in fund raising, and have sent large amounts of money out of the United States to Mexico, and then to leftist guerrillas in El Salvador", (3) that a committee of the Dallas chapter was "responsible for submitting reports dealing with strategic sites in Dallas area, for possible future terrorist targets", (4) that on one occasion funds raised by the chapter were sent "out of the country", and (5) that on another occasion such funds were raised "for the liberated zones of El Salvador". According to the LHM, the objectives of the FBI investigation were "to determine extent of monetary support to leftist movements in El Salvador", "to determine potential CISPES has for conducting terrorist acts in the United States on behalf of leftist groups in El Salvador", and "to identify those individuals who are knowingly supporting terrorist groups in El Salvador through their efforts in the United States".

The Dallas cables on which the fifth Varelli point in the LHM is based were important to the predication of the CISPES investigation and were examples of what the FBI Director found to be inaccurate and/or embellished reporting on the part of both the asset and the Dallas case Agent.[8] Senior career OIPR attorneys told the Committee that they considered this information to be sufficient to justify an international terrorism investigation under the Attorney General's guidelines. They said their office did not normally raise questions about the FBI's sources, especially at the outset of an investigation that did not involve the use of intrusive techniques such as electronic surveillance requiring a court order.[9]

G. NATIONWIDE EXPANSION OF THE CISPES INVESTIGATION

On October 28, 1983, FBI Headquarters sent a message to the Special Agents in Charge (SACs) of all field offices directing that every CISPES chapter throughout the country be investigated. This message was drafted by the Headquarters Supervisor and approved by the Deputy Assistant Director for the Criminal Investigative Division. Copies were sent to five other senior FBI officials, including the Assistant Director and the Terrorism Section Chief.

Three weeks previously, a field office that was not among the original 11 had reported to FBI Headquarters that it had checked on CISPES with local law enforcement authorities and found "no information indicating that the group is involved in terrorist or criminal activities. Information to date indicates that the organization is involved with information campaigns, fund raising functions, and promotion of peaceful demonstrations against United

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[8] See pp. 71-73, below.

[9] SSCI Hearings, April 13, 1988, p. 104.

States policy in El Salvador." Unless advised to the contrary, the field office said it was conducting no further investigation. A handwritten note by the Headquarters Supervisor on the FBI Headquarters copy of this report indicated that the FBI Headquarters response was the October 28 message to all SACs.

The October 28 message stated that the authorization for the international terrorism investigation on March 30, 1983, "allows for . . . investigation on any CISPES chapter as part of the national organization". The basis for the investigation was summarized as follows:

> FBI sources have advised that the CISPES leadership covertly furnishes . . . funds and materials to the guerrillas in El Salvador; assists in the maintenance of camps in the United States for rehabilitation and reindoctrination of Salvadoran guerrillas and Salvadoran guerrilla sympathizers either to be returned to the fighting in El Salvador or to remain in the United States to establish guerrilla cells in the United States; and takes direction from [the FDR, FMLN], and the Cuban and Nicaraguan Governments.

The FBI Inspection Division later found that the reference to connections between CISPES and guerrilla "camps" in the United States was not documented in FBI files.

The October 28 message enclosed a copy of the March 30 authorization and noted:

> [T]he purpose of this investigation is not to investigate the exercise of First Amendment Rights of CISPES members who politically oppose the U.S. policy in El Salvador and Central America, but to ferret out the identities and activities of those members who are knowingly supporting the Salvadoran guerrillas in the United States and Central America and furnishing financial and material support to the guerrillas.

At the same time, however, the message broadened the scope of the investigation beyond the limits stated in the March 30 authorization and other constraints imposed at the outset of the investigation. Recipients were "instructed to determine location, leadership, and activities of CISPES chapters in your respective territories through sources, investigation, and surveillances". Field offices were urged to request FBI Headquarters authority to obtain telephone toll records and bank records for each chapter, although some constraints were placed on the opening of separate investigations of individuals. WFO was instructed to concentrate on the CISPES national headquarters in preparation for taking over from Dallas the task of coordinating the investigation as "office of origin". (This transfer of responsibility never occurred.)

Finally, in response to the action of the office that planned to close its local CISPES investigation, the October 28 message instructed field offices not to close such investigations "until all avenues of investigation have determined that the local chapter leaders are not knowingly involved in the covert activities of CISPES". In an attached note to FBI Headquarters officials, the Headquarters Supervisor advised that this message was "in response to questions from various field offices as to effect on [March 30, 1983] authorization on CISPES and its many chapters".

Director Webster's special assistant who was assigned responsibility for review of domestic security/terrorism investigations to ensure compliance with the Director's policies and Attorney General guidelines told the Committee that when he learned of the CISPES investigation, he advised the Terrorism Section that an investigation of a group ought to focus on those elements of CISPES involved in a terrorist "enterprise". The special assistant told the Committee that he was never made aware, however, of the full scope of the CISPES investigation. The October 28, 1983, instructions remained in effect, moreover, until the CISPES investigation was closed in June, 1985. As discussed later, the terrorism section sent further instructions for the nationwide CISPES investigation to 33 field offices in July 1984 and to 29 field offices in October 1984. As late as November 15, 1984, the terrorism section directed a field office to continue investigating a local group "under the umbrella of CISPES" until it determined that the group "is not engaged or is not in support of terrorism".

A bomb exploded at the U.S. Capitol building on November 7, 1983, and another communique from the Armed Resistance Unit took credit for the action in language similar to the previous statements accompanying the Fort McNair and Navy Yard bombings. The group claimed to be "acting in solidarity with all those leading the fight against U.S. imperialism—the peoples of Grenada, Lebanon, Palestine, El Salvador, and Nicaragua—who are confronting direct U.S. aggression, and those, like the people of Chile and the Philippines, who are struggling to free their nations from U.S. puppet regimes".[10] A public CISPES march held in Washington, D.C., on November 12 attracted an estimated 20,000 people and ended with a rock-throwing incident involving counter-demonstrators in which about 25 people were arrested.

Shortly before the Capitol bombing, the FBI Special Agent in charge of the investigation in the Dallas field office proposed that a conference be held at the Dallas office with the Headquarters Supervisor and representatives of other offices to consider "a more aggressive approach in regards to investigation of El Salvadoran terrorist support activities in the United States". The Dallas Special Agent stressed the "likelihood" that Salvadorans who had committed terrorist acts in Central America "participated in the most recent bombings in the Washington, D.C. area". He said that he and his source (Mr. Varelli) had developed a plan to identify and deport Salvadorans wanted for committing terrorist acts in El Salvador. Another field office concurred with this proposal.

On November 10, 1983, the New Orleans, Louisiana field office recommended to FBI Headquarters that a "CISPES conference be held as soon as possible to discuss where we have been and where we are going. It is imperative at this time to formulate some plan of attack against CISPES and specifically, against individuals, such as [a Salvadoran activist], who defiantly display their contempt for the U.S. Government by making speeches and propagandizing their cause while asking for political asylum". The New Orleans office proposed exploring "the possibility of deporting these individuals or at best denying their re-entry once they leave".

The initial response of the Headquarters Supervisor was to suggest waiting until a conference planned by the Terrorism Section for the Spring of 1984, to allow time for additional offices to initiate investigations of their local CISPES chapters. The Dallas Special Agent and another office repeated their call for an immediate conference.

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[10] See the Appendix for the full text of this communique.

The proposed conference was approved by FBI Headquarters to be held in Dallas on December 8–9 with representatives of five field offices and the Headquarters Supervisor. In a memorandum supporting the New Orleans office's proposal for this conference, the Headquarters Supervisor explained the need to review and discuss ongoing investigations and closed with the following paragraph:

> In addition to the above, inquiries regarding these matters from other agencies such as the Department of Defense, Central Intelligence Agency, Department of State, congressional committees, U.S. Secret Service, etc. are increasing. The current situation in El Salvador, the involvement or support for the guerrilla activities from groups or organizations in the United States, and the possible terrorist activities of these groups within the United States are of key importance and concern to the Reagan Administration. This conference will allow for formulation of the most productive investigations to protect the interest of the United States. The results of these investigations will provide the necessary information to respond to the numerous requests received by the FBI.

A message from the Dallas office to FBI Headquarters indicated that the Dallas source (Mr. Varelli) would "be available" during the conference to present an "update" on Salvadoran leftist leadership and "CISPES chapters and activities."

Following this conference, the Dallas Special Agent and Mr. Varelli visited Washington, D.C., to determine whether Mr. Varelli could obtain information about the national headquarters.[11] In addition, the Headquarters Supervisor drafted new instructions to all continental FBI field offices recommending that they obtain FBI Headquarters approval to request telephone toll records of local CISPES chapters. The message went on to state:

> As a national organization, CISPES is divided into regions and then into chapters. The immediate goals of this investigation are to determine the identity of the national and regional leadership of this organization.
>
> At the same time, the officers of the local chapters are to be identified. Another goal is to identify the countries and organizations specifically who are furnishing direction and funding to CISPES. International contacts are to be specifically identified. . . .
>
> Identification of individuals are [sic] to include full background and biographical data. Efforts should be made to determine travel information, both domestic and foreign, for these people. When persons occupying national or regional leadership positions or key chapter leadership positions are identified, requests, with all information available, should be submitted to FBI Headquarters for [further] investigation authority. Subsequently, toll record requests should be submitted for these individuals.

These FBI Headquarters instructions also suggested CISPES links to the persons responsible for recent bombing (although apart from the language of the communiques that connection is not documented elsewhere in the CISPES files):

> Investigation in several recent bombings, believed to be perpetrated by the May 19th Coalition, has indicated a possible connection between the May 19th Coalition and CISPES membership and/or leadership. Recipients are, therefore, to obtain membership lists in CISPES chapters to compare with the known membership of the May 19th Coalition.

The instructions concluded with guidance for assessment of potential assets and a request that "all pertinent information in this investigation [be] furnished to Dallas and FBI Headquarters." The

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[11] See p. 75 below.

Headquarters Supervisor who drafted this message sent copies to his unit chief and the Terrorism Section Chief.

H. SIGNIFICANT FBI HEADQUARTERS DEVELOPMENTS, JANUARY-MAY, 1984

1. Director's personal approval of use of an FBI source.—In January 1984, higher FBI officials including Director Webster were called upon to approve the use of a particular investigative technique against one university campus CISPES chapter. The FBI field office investigating that chapter had reported to FBI Headquarters in October, 1983, the identities of three of the chapter's officers and a local press report of a planned public meeting of the chapter. The FBI's source "could furnish no information when, where, or if CISPES members meet on a regular basis, or what the actual purpose of the [campus] group is."

In January 1984, the Headquarters Supervisor drafted a memorandum from the Assistant Director to the Director requesting authority for the field office to use its source in a manner that required such approval. The memorandum advised that the FBI currently had an international terrorism investigation on CISPES "as an organization supprting the terroristic activities of the [FMLN], which seeks the violent overthrow of the current Salvadoran Government. The FMLN has members in the United States and Mexico that are in contact with CISPES leaders. CISPES has chapters in several cities throughout the United States." The particular campus chapter was described as "not apparently sanctioned . . . officially" and "primarily composed of . . . students." It held "many of its meetings on the . . . campus." The memo stated further:

> The thrust of the FBI's investigation of CISPES is to identify its leaders at the local and national level in an effort to determine the extent of financial and material support being furnished to the FMLN. Our investigation also seeks to determine the means of acquiring and furnishing this support.
>
> This [use of a source], if approved, will be targeted to determine: the leadership of this chapter; its contacts with the national leadership; what support it is furnishing and how that support reaches the national organization and ultimately the FMLN; what contacts its leaders may have with the FMLN; and what direction FMLN, other organizations, and countries may be furnishing to CISPES.

This recommendation was forwarded to the Director with the approval of the Terrorism Section Chief, the Assistant Director and his Deputy, and the Assistant Director for Legal Counsel and his Deputy, Director Webster personally initialed his approval. Nothing in the memorandum indicated that his campus chapter was different from any of the other CISPES chapters around the country. Indeed, no explanation was offered for the use of the technique in the investigation of this chapter. FBI officials appear to have relied on the judgment of the Headquarters Supervisor that the technique was appropriate for the particular local group.

2. Terrorism section analytic study.—In February 1984, the Headquarters Supervisor persuaded his superiors in the Terrorism Section to commission an analytical study of "Salvadoran terrorism activities and links with specific support groups in the United States," in preparation for a forthcoming conference. Twenty-two field offices were asked to provide a brief summary of the "major case activity, asset reporting, a review of toll records . . . and any other data which may be of use." Each of these offices was also asked to give its "best estimation of the threat posed by Salvadoran leftist elements in the United States."

The resulting analysis, entitled "Salvadoran Leftist Movement in the United States," was based on information through March 1, 1984. Its assessment of CISPES relied heavily on the Varelli information, including the organizational diagram from the March 1983 Quantico conference that portrayed "command/directional links" from the FMLN/FDR to CISPES, as contrasted to the "ideological/organizational links" betweem FMLN and FDR component groups. The Terrorism Section's analytic unit appears to have made little or no use of the extensive finished analytical products on El Salvador published by other elements of the Intelligence Community during this period. The so-called "Handal trip report" was the basis for a statement that "CISPES was established with considerable participation of the CPUSA, the PCS, and the United States Peace Council (USPC), all tied to Soviet interests." This analysis made no reference to the role of non-communist groups in the formation of CISPES.

The analysis also repeated as credible the single-source Frank Varelli assertion that CISPES had "created an elaborate underground system in the form of sanctuaries, to support and aid illegal Salvadoran refugees, some of whom are members of terrorist groups themselves." There was little beyond Mr. Varelli to support the statement that "CISPES has also been very successful in fund raising, and has sent large amounts of money out of the United States to Mexico, and then to leftist guerrillas in El Salvador." The Terrorism Section analytic unit appears to have made no attempt to probe the credibility of this information.

Most of the discussion of CISPES strung together a summary of CISPES activities reported by various field offices. There were also two recent reports of threats of violence. After CISPES members visited a TACA Airlines office in Los Angeles to denounce its role in transporting deported aliens to El Salvador. TACA received a telephone threat to bomb TACA aircraft if such activity did not stop. In another city, a CISPES member predicted that Latin America would commit terrorist acts in this country if the U.S. invaded Nicaragua, and there was a theoretical discussion of how to knock out the city's electrical power. In a different part of the country, two U.S. citizens were allegedly assisting illegal aliens and limiting their aid to "aliens of Communist or guerrilla background." The analysis concluded, "If this is, in fact, the case, such an enterprise can realistically be construed as a potential threat of future terrorist activity in the United States." (There was nothing said, however, to link these individuals with CISPES or any local CISPES chapter.)

The analysis included the following recommendations for FBI field offices "beginning their investigations of CISPES chapters:"

> (1) To determine propaganda and events conducted by CISPES nationwide, a P.O. Box can be set up to receive literature and pamphlets from local offices. A pretext call can be made requesting that literature be sent to the P.O. Box. This will also include an invitation to their next "General Meeting," in most cases. In addition, literature from other groups connected with CISPES will be sent, as there appears to be a mailing list circulated among various organizations.

> (2) CISPES often advertises social events such as dances, barbecues, and bake sales to raise funds. These events can be attended without difficulty.
>
> (3) CISPES closely aligns itself with church groups. In fact, most [sic] CISPES offices have set up sanctuaries in churches and have publicly boasted the fact that they can protect illegal Salvadorans without interference of government agencies. Pretext calls to churches can aid in determining locations of their sanctuaries and information regarding protection of illegal Salvadorans.

While the analysis stated that the FBI's objectives in the CISPES investigation were to identify terrorists and support to terrorists, no guidance was provided regarding investigation of activities protected by the First Amendment.

A concluding section discussed the CISPES political strategy "to influence public opinion via an anti-Reagan campaign" and speculated on the possibility that CISPES plans might include "militant mobilizations" against such "Reagan-related targets" as "campaign offices, party fundraisers, and the Republican National Convention in Dallas." The analysis made no systematic attempt to assess the likelihood of CISPES use of terrorism. Instead, the focus shifted to the purely political threat posed by CISPES in serving Soviet interests.

> Having established ties between CISPES and the CPUSA and the Soviet Union, although the extent is unknown, it appears that CISPES activities are of benefit to Soviet active measures operations vis-a-vis El Salvador. This involvement demonstrates the complexities and interrelationships of groups comprising these world solidarity movements. CISPES, in its public literature, alludes to these connections and envisions itself as part of a "growing" antiwar movement in the United States.

The extent to which such ideologically oriented analysis affected the overall conduct of the CISPES investigation is not clear. Nevertheless, it reflected a willingness by at least one analyst to discredit opposition to Administration policy with generalizations having marginal relevance to the FBI's principal investigative interests. The analysis was approved by the Terrorism Section Chief for use at an FBI conference and for dissemination to all FBI field offices. Copies were sent to the State Department and the principal agencies in the Intelligence Community.

3. Disclosure of CISPES interviews.—Some indication of the existence of the CISPES investigation became public in March, 1984, when members of the Central American Solidarity Committee in Milwaukee issued a statement complaining about FBI interviews that asked about the group's relationship with CISPES. When the office of Senator Robert W. Kasten, Jr., inquired into the matter, FBI Headquarters directed the Milwaukee field office to refer the inquiry to FBI Headquarters and to "hold in abeyance all further interviews of CISPES members pending attendance" at another conference on Salvadoran terrorist activities. The Milwaukee office was "not to divulge any information concerning this investigation or acknowledge the existence of this investigation to anyone outside the FBI." The Headquarters Supervisor coordinated these instructions with the FBI Congressional Affairs Section, with copies to the unit chief and Terrorism Section Chief.

4. April 2, 1984, memorandum.—On April 2, 1984, the Dallas office sent to FBI Headquarters and all other field offices a 32-page letterhead memorandum (LHM) explaining the progress and objectives of the CISPES investigation, accompanied by a copy of a CISPES document discussing its 1984 national strategy. Included in the LHM were a list of 138 different "organizations connected with CISPES or mentioned in relation to CISPES activities" and a list of names and addresses of known CISPES chapters and leaders. The LHM repeated the information provided in June 1983 for review by the Justice Department. Additional information included the Washington, D.C., bombings and the two recent threats of violence mentioned in the Terrorism Section analysis, discussed above. The 1984 CISPES national strategy document was described as a "call to counter President Reagan's policies and . . . meet the administration wherever they go with pickets, demonstrations, guerrilla threats and civil disobedience actions. CISPES will respond with militant mobilizations, on Reagan-related targets, which may include Republican National Convention in Dallas, Texas." A few CISPES leaders were identified as having contacts with FMLN representatives and Communist country officials and as having knowledge that Salvadoran guerrillas had entered the United States illegally. There was no reference, however, to CISPES connections with guerrilla "camps" in the United States, as asserted in the November, 1983, nationwide instructions from FBI Headquarters.

The LHM cited one intelligence report of clandestine contact between an American citizen and a Salvadoran leftist abroad, with nothing to connect the American with CISPES. In addition, Robert White, former U.S. Ambassador to El Salvador, had been asked by FBI Special Agents if he was aware of any covert activity on behalf of, or funding of, Salvadoran leftist rebels, originating in the United States. He was cited as saying "he was not aware of specific instances, but was quite sure CISPES was involved in such activities."

The Dallas LHM made the assertion that Fidel Castro had "ordered" Farid Handal "to create 180 groups of CISPES throughout the United States . . . as a support apparatus for the Marxist Guerrillas of the FMLN and its political arm the FDR." The memo concluded with the following comments on CISPES and the Catholic Church:

> Investigation has determined that CISPES is very closely connected with the United States Catholic Church. The Church, who [sic] agrees with most CISPES philosophy, have [sic] set aside various sanctuaries to be used to house illegal Salvadorans in the United States. There are some who will take only Salvadorans, no other type of refugee is allowed. [There is a] possibility these sanctuaries house . . . guerrillas and possibly is [sic] a storage place for weapons. The Catholic Church has openly boasted that it is free to protect these refugees without being concerned of [sic] local or Federal law enforcement agencies. . . .
>
> Dallas feels that an important objective which must be met in the near future is the infiltration of the "Sanctuaries", which are being set up by CISPES throughout the country under the protection of the Catholic church, and attempt to determine if it [sic] is indeed a "hideout" for . . . guerrillas and storage areas for arms.

Nothing else in the LHM supported these assertions, which appear from their style to have been drafted by Frank Varelli rather than by the FBI Special Agent who should have written such a communication.

The Dallas LHM was intended for dissemination to the Justice Department review unit, but that did not occur. On April 8, while the Dallas Special Agent was in Washington, D.C., in preparation for a conference at Quantico to discuss the case, a copy of the memorandum was stolen along with other personal effects from the automobile the Special Agent was using. A message from FBI Headquarters asked all field offices to review the LHM and assess the potential damage if it were to fall into the wrong hands. Responses varied, but many offices shared the view expressed by the Dallas supervisor: "Perhaps the most damaging aspect of the document would be the tremendous publicity CISPES would gain should information be made public. . . ."

5. April, 1984, demonstration and Navy Yard bombing.—The theft of a key document brought the CISPES case to the attention of senior FBI officials above the Terrorism Section, including the Assistant Director, but apparently did not result in any substantive review of the merits of the CISPES investigation. Shortly after the document was stolen and the second Quantico conference was concluded, a CISPES-sponsored demonstration in San Francisco on April 16, 1984, led to the first acts of violence associated with CISPES protest activity to be reflected in FBI files. The San Francisco FBI office reported to FBI Headquarters that "approximately 1,000 jeering demonstrators" in front of a hotel where Henry Kissinger was delivering a speech "hurled rocks, eggs and debris at the police. No officer was injured, but three of the 191 arrested demonstrators were charged with assault on a police officer." One demonstrator was hospitalized. The demonstration was "described as one of the angriest and noisiest in recent San Francisco history." This report went to senior FBI officials, including Director Webster and the Assistant Director who initialed an accompanying note personally. The note drafted by the Headquarters Supervisor advised that "CISPES is currently the subject of . . . [an] international terrorism investigation."

On April 20, 1984, a bomb exploded at the Officer's Club at the Washington Navy Yard. A caller claimed that the action was to protest "the U.S. imperialist war in Central America and the Caribbean," mentioning the FMLN, FDR and independence for Puerto Rico. Items found at the scene were consistent with the previous Washington bombings claimed by the Armed Resistance Unit in 1983 at the National War College, the Navy Yard, and the U.S. Capitol. The Washington field office advised FBI Headquarters and other FBI offices that it believed the same persons were responsible. As part of the bombing investigation, the Washington office initiated physical surveillances of previously identified subjects of the ongoing criminal investigation of these bombings—including members of CISPES and the May 19 Communist Organization. A written communique to the news media from the Red Guerrilla Resistance declared that the action was dedicated to Carroll Ishee, "North American anti-imperialist who died fighting along side the FMLN of El Salvador." The authors proclaimed their "solidarity with the sovereign revolutionary nation of Nicaragua, the national liberation struggle of the Salvadoran people led by the FMLN/FDR, the revolutionary struggle for independence and socialism for Puerto Rico, and the just struggles for self determination of the peoples of the Caribbean and Latin America." The Washington field office advised FBI Headquarters and all field offices of this communique and a previously obtained CISPES pamphlet stating that the CISPES national leadership conference in January 1984 was held "in honor and in memory of Carroll 'Carlos' Ishee." an American killed fighting with the FMLN in El Salvador.

This bombing and the Washington field office communication undoubtedly tended to support continued investigation of CISPES. By April, 1984, however, the FBI had ruled out CISPES members as bombing suspects. CISPES members were considered the primary suspects in these bombings by the bombing task force comprised of Federal and local police agencies until late March, 1984, when information was developed that the May 19th Communist Organization was responsible for these terrorist acts. These changed circumstances do not appear to have caused any reassessment of the CISPES investigation.

6. April, 1984, Quantico conference.—The second FBI Headquarters conference of Salvadoran terrorism went forward at Quantico on April 9–11, 1984, despite the theft of a key document on the CISPES investigation. The Headquarters Supervisor invited 21 field offices to send representatives to the conference, reflecting what was then considered the scope of the most active FBI investigations. Regarding CISPES, the offices were told that the conference would "address the CISPES organization and its structure, including numerous CISPES organizations utilizing different names which must be directly identified with CISPES. Targeting of principal CISPES leaders and chapters, CISPES funds and connections with other organizations, and CISPES involvement in illegal activities or plans for such will be discussed." The Dallas office would "be relied upon for contribution and information regarding CISPES."

On May 1, 1984, the Headquarters Supervisor sent a communication to 20 field offices providing guidance for the CISPES investigation in the light of discussions at the Quantico conference. In response to field suggestions following public disclosure of FBI interviews in Milwaukee, offices were cautioned to use care in conducting overt interviews of CISPES members. Without citing specifics, the instructions said conference discussions had included "information that the CISPES and [Salvadoran guerrillas] are in the preparatory stages to conduct terrorism in the United States, notwithstanding the support already being furnished to the guerrillas in El Salvador." The instructions stressed infiltration of CISPES and of Salvadoran guerrilla groups in the United States so as to "allow the FBI to investigate . . . from a proactive stance and possibly prevent terrorist actions."

Regarding the sanctuary movement, the instructions said the FBI "should not be involved in enforcing the immigration laws," but that "all available information pertaining to Salvadoran alien smuggling" should be forwarded to the local INS office. Field offices were told that the FBI's investigations "are not directed toward those entities who assist aliens for humanitarian or political purposes; however those who assist these aliens because of their connections with, and support of [Salvadoran guerrillas] are targets of this investigation." No guidance was provided on how to distinguish among persons or groups with these varying motivations.

I. DEVELOPMENTS IN THE DALLAS OFFICE, MAY–JUNE, 1984

The theft of a key CISPES investigation document triggered a series of events that culminated in the resignation of the Dallas Special Agent who had lead responsibility for the investigation and in closer scrutiny of the FBI's major source. Frank Varelli. The Dallas field office's immediate assessment of the damage from possible disclosure of the stolen document reported to FBI Headquarters that Mr. Varelli "has not been active in CISPES activities directly for many months" due to concerns about his cover. Mr. Varelli contacted the Dallas office and alleged that the Dallas Special Agent had taken for his personal use some of the informant funds owed to Varelli. In addition, Mr. Varelli told the head of the Dallas office that he had classified FBI documents at his residence. Those documents were promptly retrieved (but not inventoried), and an internal FBI investigation of Mr. Varelli's charges began.

In the midst of this turmoil, Mr. Varelli provided the Dallas office on May 11, 1984, with literature he had received from the Dallas CISPES chapter on plans for protest demonstrations at the Republican National Convention, scheduled to be held in Dallas in August. While the article did not mention violence, it did state that legal assistance would be available "for those demonstrators who may be arrested." In reporting this information, the Dallas office asked FBI Headquarters to consider changing the "office of origin" for the CISPES investigation from Dallas to Washington field office "due to that city having the national headquarters. Dallas chapter is not active enough to provide insight into CISPES activities nationwide." A note on the FBI Headquarters copy says the Dallas office was advised on May 19 that "office of origin" would not change.

A new Dallas Special Agent was assigned to the CISPES investigation, and one of his tasks was to prepare a revised version of the April 2 letterhead memorandum on the case sent to FBI Headquarters and stolen from the previous Dallas Special Agent. Apart from Mr. Varelli's information, the LHM cited only two matters tending to link CISPES with terrorism—the statements accompanying the Fort McNair bombing in May 1983 while CISPES representatives were meeting in Washington, and the alleged telephone bomb threat against TACA Airlines. The LHM also included the list of addresses and/or leaders of all known CISPES chapters contained in the April 2 version. It concluded with the following statement of objectives:

> 1. Through investigation directed at the inner circle of CISPES leadership, determine the extent of control and direction furnished from terrorist groups in El Salvador or from other foreign power.
> 2. Determine extent and nature of CISPES involvement in organizing/supporting terrorist activities within the United States with particular attention placed on the forthcoming political conventions and 1984 Olympic games.

This LHM was disseminated to all FBI field offices and to the Justice Department review unit.

An attorney in the Justice Department review unit reviewed this LHM on September 20, 1984, and checked the box beside a separate form statement that "[t]he facts as reported therein satisfy the requirements of the Attorney General's Guidelines." The Justice Department's Counsel for Intelligence Policy testified to the Committee that her office's general policy with respect to review of international terrorism investigations under the Attorney General's Guidelines was to give the FBI the benefit of the doubt at the end of the first year of an investigation, because it sometimes took longer for the investigation to pursue and resolve the initial information that justified opening the case.[12]

J. FBI HEADQUARTERS GUIDANCE, JULY–DECEMBER, 1984

1. Young America's Foundation article.—On July 12, 1984, the Headquarters Supervisor sent 33 field offices copies of a letter and article on the Washington, D.C. CISPES chapter that was written by the program director of a conservative political group called Young America's Foundation. The author had sent copies to Director Webster and the assistant Director in charge of the FBI Intelligence Division. The copy of the transmittal communication in FBI Headquarters files indicates that the Headquarters Supervisor sent out the letter and article without higher level authorization and prepared a response to the author over the signature of the Assistant Director in charge of the Criminal Investigative Division. The transmittal communication stated the author's position with the Foundation and said the enclosure was "furnished for the information of recipients."

The article itself described a CISPES project to raise money for a shoe factory in El Salvador and concluded with the assertion that "the aid the FMLN/FDR will receive from CISPES will come in the form of combat boots, a type of direct military assistance." The accompanying letter stated that the article "exposes a DC CISPES project designed to provide direct military assistance to the terrorist FMLN/FDR in El Salvador," that it would soon be published in *The American Sentinel,* and that the author "obtained this information and the supporting documents by attending the 9 June meetings of CISPES." The letter was written on Young America's Foundation letterhead stationery listing prominent conservatives on the group's board of directors and national advisory council. Two of the six-member board of directors were also White House staff members, although not identified as such on the letterhead.

Based on the FBI Director's findings and Committee staff examination of pertinent documents, it appears that these communications were not part of any effort by the White House staff or any other element of the Executive branch to influence the FBI's investigation of CISPES. There is no indication that the senior FBI officials whose names appear on the correspondence had any knowledge of the dissemination of the material to FBI field offices. While the two White House staff members who served on the Young America's Foundation board were generally aware of the efforts of the program director to collect and publicize this type of information about CISPES, there is no indication that they knew of the program director's action in sending this specific material to numerous federal government agencies including the FBI.

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[12] SSCI Hearings, April 13, 1988. p. 87.

On two other occasions in 1984, material from conservative groups on CISPES was disseminated among FBI field offices, rather than by FBI Headquarters. On January 9, 1984, the Washington field office disseminated to FBI Headquarters and 14 other offices copies of publicly available CISPES publications (the group's history, an explanation of its structure, a training manual for "neighborhood protest against U.S. intervention in Central America," and the 1984 CISPES national strategy proposal), along with a critical pamphlet on "CISPES: A Guerrilla Propaganda Network." The Washington field office's transmittal message advised that the critical pamphlet "is a right wing view of CISPES. However, it gives very good background and historical information on CISPES." On October 12, 1984, the Washington field office disseminated to FBI Headquarters and 13 other offices a pamphlet titled "CISPES: Fiction and Fact" published by Students for a Better America and a pamphlet titled "CISPES: A Terrorist Propaganda Network" published by the Council for Inter-American Security. The transmittal message cited the source who provided these publications as stating that they "were published by what the source called right wing groups. Source advised that looking at these two pamphlets and at CISPES's propaganda together would give the reader a more balanced idea of CISPES."

2. July, 1984, instructions.—On July 26, 1984, detailed instructions were sent out by the Headquarters Supervisor for the conduct of the CISPES investigation. Senior FBI officials who had been aware of CISPES protest demonstrations were not similarly informed of the instructions.

On July 14, the Los Angeles office had reported CISPES plans in conjunction with a dozen other groups to hold several marches and rallies. As summarized in a note by the Headquarters Supervisor, the groups' reported purpose was to gain "vast public attention through the multitude of media representatives in the Los Angeles area." The note said the report was being relayed to the White House, Justice Department, CIA, State Department, and Secret Service. It was initialed as read by the Assistant Director, with copies sent to six other Criminal Investigative Division officials and to the Director's special assistant. According to the Executive Assistant Director—Investigations, such notes were sent to alert the Director's office to matters on which it might receive inquiries, and not for substantive review of issues in the cases.

The FBI Headquarters file copy indicates that the July 26, 1984, communication was sent to 33 offices without any higher level approval or formal coordination and that copies were made only for the Headquarters Supervisor and his unit chief. The messsage began by citing the April conference "attended by those offices wherein most activity is occurring." The purpose of the communication was "to reiterate, for those offices in attendance, and to advise, for those offices not present, guidelines and instructions for these investigations."

> As recipients are aware, CISPES is a composite of many different groups, including political groups, church groups, labor groups, civic groups, etc. Much of CISPES activities are constitutionally protected and lawful. The target of this investigation is to identify those persons involved in CISPES who are knowingly aiding and abetting the . . . [FMLN], the Salvadoran terrorist organization seeking the violent

overthrow of the Salvadoran government and to identify the individuals in CISPES who are or may be involved in acts of terrorism in the United States, or planning such acts. The allegations upon which this . . . investigation was based are that CISPES furnishes funds and material to assist the FMLN in their conduct of terrorism. Providing this material to the FMLN may pose violations of the Neutrality Act, Firearms Control Act, etc. Representatives of CISPES have also been involved in threats to disrupt the operation of an airline, a possible Hobbs Act violation.

CISPES by their own admission has direct contact with the FMLN and the . . . [FDR]. CISPES forwards literature and propaganda obtained from the FMLN and FDR, a possible violation of the Foreign Agents Registration Act.

Recently, a CISPES member advised of plans [for terrorist action in a U.S. city] if the U.S. military forces were used in Central America.

CISPES has also discussed plans to disrupt the Republican National Convention in Dallas, Texas.

Based on the above, there is [sic] sufficient grounds for this investigation. It must be noted, however, that many of the people and groups involved with CISPES do so for political, emotional, or sociological reasons and are not aware of or involved in the CISPES covert activities enumerated above. Therefore, it is imperative that these investigations are closely supervised and monitored to ensure our investigations do not infringe upon the rights of these individuals or groups protected by the constitution.

Some offices have reported information recently regarding political statements and political lobbying by CISPES or CISPES affiliates. Supervisors in recipient offices must carefully monitor this and related investigations and asset operations within your respective divisions to ensure appropriate direction, targeting, and reporting.

Target areas . . . are to include the following:

Collection of funds, weapons, and military paraphernalia and distribution to the FMLN/FDR are a target. Assets are to be tasked to obtain information regarding these activities. Bank records of CISPES chapters are to be obtained through National Security Letters. . . . These records are to be reviewed and compared by the office of origin to determine how funds are channelized to the FMLN/FDR or how they are used to procure weapons or other military paraphernalia to the FMLN/FDR. Efforts are to be made through investigation and assets to determine the means of furnishing this material to the FMLN/FDR. . . .

Control and/or direction furnished to CISPES by the FMLN/FDR is a target. Investigation is to be conducted and assets targeted to determine contacts between FMLN/FDR representatives and CISPES leaders or key members. Since CISPES derives its broad base support from various organizations based on its stated political stance and humanitarian assistance to refugees in the United States and El Salvador, only leaders of key chapters or key members of CISPES are likely to be aware of or involved in the covert activities of CISPES. These efforts should include telephone toll record reviews, physical surveillances, and FISA-obtained electronic survelliance where warranted. [No such electronic surveillance was ever conducted.]

Another target is determining the flow of propaganda received from the FMLN/FDR and distributed by CISPES. Again the origin of this propaganda is likely to be known only by the leaders and key members of CISPES. Techniques to be employed to obtain this information are those enumerated just above.

Plans for violence and terrorist activities are targets of this investigation. Assets are to be tasked to penetrate the leadership of CISPES and be alert for any information concerning this target area. It is noted that violent demonstrations or plans to cause violent disruptions are included in this targeting. Political activities or political lobbying by CISPES, unless it can be shown as a violation of the Foreign Agents Registration Act, are not, repeat not, targets of this investigation and should not be monitored.

The above guidelines are to be used in determining investigative goals in this matter. FBIHQ noted during the April conference that little effort has been made by the field to aggressively pursue these investigations. FBIHQ also noted that the office of origin should be more aggressive in directing this investigation. WFO [Washington field office], as the location for the national CISPES headquarters, is to aggressively pursue this investigation and begin preparation to assume office of origin. WFO . . . has identified some of the national leaders and activities of CISPES. WFO is to ensure appropriate field offices are aware of all pertinent information available at WFO.

Dallas is to aggressively coordinate and direct this investigation, including review and coordination of toll record and bank record information. . . .

The message concluded with instructions that recipients were to "ensure appropriate attention and supervision is maintained on this investigation."

Noteworthy in this communication are the continued reliance on the Varelli information to link CISPES with the FMLN/FDR—despite the fact that FBI Headquarters was already thinking of phasing out its use of Mr. Varelli as an asset because of his tendency to tell people about his FBI role and his aberrant behavior in a polygraph examination[13]—and the emphasis given to isolated local incidents (the reported TACA Airlines threat and the hypothetical discussion of possible terrorism in one city) to sustain the predicate for the investigation. Also significant, given the timing a month before the Republican Convention, was the reference to CISPES discussion of "plans to disrupt" the convention and the instruction to target not only terrorist activities, but also "violent demonstrations or plans to cause violent disruptions" later in the year.

The Director's special assistant was consulted in the drafting of the July 26 communication, although he did not review the final version. There is no indication that the special assistant in the Intelligence Division, who was consulted on policy guidance early in the investigation, had any role in this communication. FBI Headquarters files reflect, however, that the latter official was consulted by the Headquarters Supervisor in preparing instructions sent to one field office on May 29, 1984, stating FBI policy for infiltration of a group on a university campus and authorizing physical surveillance at a campus "for the purpose of identifying leaders of CISPES and their activities as they concern the CISPES investigation." The Intelligence Division special assistant was also consulted on FBI policy regarding infiltration of groups.

3. Field questions about the July, 1984, instructions.—Several FBI field offices raised questions about the July 26 guidance. One office responded on July 31, 1984, with the opinion that the instructions "are not direct and appear to be telling us we are not on solid ground." From this office's viewpoint, "association between CISPES and the FMLN/FDR has clearly been established by both headquarters and field offices." The office observed that CISPES "has incorporated many different individuals under an 'umbrella of support' through its association with various legitimate political, civic, and religious groups. . . . By extending its 'political base,' CISPES creates a situation whereby thorough investigation of CISPES, along with key CISPES leaders, also dictates investigation of associated groups, thereby possibly infringing on constitutionally protected rights. . . . [T]his manifestation of CISPES activity may be more than coincidence inasmuch as CISPES has, in the past, held workshops re FBI investigations and is cognizant of FBI interest in said organization. We would like to note that the ACLU acts as legal counsel for CISPES." (The office's argument appears to be that CISPES was deliberately using the "umbrella" approach to avoid FBI scrutiny of certain activities and that the ACLU could be expected to advise CISPES to do so. There is no indication in the CISPES files reviewed by the Committee that the ACLU ever advised anyone on ways to prevent or avoid lawful FBI investigation of criminal activity.)

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[13] See pp. 77–79, below.

The office went on to question the consistency between FBI Headquarters caution "against reporting of political statements and political lobbying by CISPES or CISPES affiliates" and the FBI Headquarters instruction to "determine the flow of propaganda received from the FMLN/FDR and distributed by CISPES." The office asked for "clarification of the word 'propaganda' . . . inasmuch as this can be interpreted by the field to mean political statements, etc. In essence, we are directed to investigate and determine the flow of propaganda of CISPES but not to pursue propaganda in the form of political statements." The office cited recent reporting of "CISPES-related political statements, plans, and courses of action to take at the Republican National Convention in Dallas, Texas. Such actions by CISPES and its affiliates could possibly go unreported, inasmuch as this is a constitutionally guaranteed right. Nevertheless, it is apparent that CISPES plans to make their presence known at the convention in order to counter the Reagan Administration's foreign policy in El Salvador and Central America." The office noted the alleged relationships among CISPES, the FMLN/FDR, and various Communist countries and suggested addressing the issue from a foreign counterintelligence point of view. While the office agreed "that maximum efforts must be exerted" to protect constitutional rights, it requested further clarification of "investigative goals and/or techniques in order to facilitate field office investigations."

That field office sent its concerns to all the offices that had received the July 26 FBI Headquarters instructions, with a request to know if they were "experiencing the umbrella insulation of CISPES members through their affiliation with various legitimate organizations."

A second office responded affirmatively. The local CISPES office was located in the office of another organization, "which can be characterized as an umbrella group encompassing a wide angle [sic] of 'anti' causes, including anti-nuclear and so-called 'peace' groups." CISPES and the other groups used the same office space, telephones, office equipment, and full time office staff person. The second FBI field office also had classified information about the umbrella group unrelated to CISPES. The office noted that "attempts to contact CISPES members were immediately met by requests to 'see a warrant' or referring the Agents to the CISPES attorneys. In other words, CIPES anticipated FBI investigation. It is also noted that the group's attorneys included [a] long time National Lawyer's Guild member. . . ." (The second office appears to have shared the first office's view that CISPES fears of FBI investigation indicated that at least some CISPES members had something improper to hide, rather than reflecting legitimate concern about their constitutional rights.)

Because of its "understanding that CISPES was founded as a direct result of Cuban and Nicaraguan instruction," the second office concurred with the first office's suggestion that CISPES be addressed as a foreign counterintelligence matter. But the second office was not sure that doing so would "facilitate investigation," and the office was not seeking to be "decisive in the matter." (The second office did not cite any supporting evidence for its assertion about the foundation of CISPES. It appears to have relied on previous communications on CISPES sent out by FBI Headquarters and the Dallas field office, which were based on Mr. Varelli's information.)

A third office joined the exchange and stated on August 8, 1984, that "in spite of attempts by [FBI Headquarters] to clarify guidelines and goals for this investigation, the field is still not sure how much seemingly legitimate political activity can be monitored."

4. Foreign Agents Registration Act review.—FBI Headquarters did not immediately reply to these questions. Instead, four days after a Justice Department review unit attorney reviewed and approved the June 27 Dallas letterhead memorandum on the CISPES investigation, the Headquarters Supervisor directed the Dallas office "to review this investigation for activities that may pose a violation of the FARA." The Dallas office was to prepare an "extensive" memorandum "for dissemination to the Department of Justice for a decision in this regard." The message was sent on September 24, 1984, with a deadline of October 12. The Dallas office then advised 32 other field offices of this requirement, noting that CISPES bank records might have relevant information and that a review of the Dallas CISPES records as office of origin "disclosed limited indications that the banking records of CISPES on a chapter by chapter basis had been obtained and analyzed." Dallas asked the other offices to furnish a summary "if financial records had been obtained and analyzed prior to this communication."

On October 11, 1984, the Dallas office sent the requested memorandum to FBI Headquarters, along with the office's opinion that "this matter does not merit presentation to the U.S. Department of Justice for consideration under the Foreign Agents Registration Act at this time." This opinion was based on "a thorough review" of the Dallas field office files on the CISPES investigation. The Dallas office noted that the financial records of CISPES National Headquarters in Washington, D.C., were not available. The accompanying memorandum cited two assertions by Mr. Varelli that CISPES money had been sent to El Salvador and the opinion expressed by former Ambassador White. The memorandum also stated, "A review of banking records of numerous CISPES Chapters in the United States disclosed minimal balances maintained, moneys expended for chapter operation and national dues, and no indication of transfers of funds to foreign locations. [Former Dallas source Varelli] commented that these were probably accounts intended for review, and that the cash donations and large money transfers were probably handled via courier." The FBI Headquarters copy of the transmittal communication noted that the memorandum was disseminated to the Justice Department review unit (OIPR).

This communication shows that the Dallas office was continuing to report Mr. Varelli's information as credible, even though he was now a "former asset" and even though his assertions were contradicted by other evidence. As with previous memoranda, the Justice Department review unit was not told anything about the source cited by the Dallas office in this memorandum.

5. October, 1984, instructions.—In a communication to 31 field offices on October 17, 1984, the Headquarters Supervisor responded to the questions raised by several field offices. There is, again, no indication in the FBI Headquarters file of higher approval or other coordination of these instructions, and copies at FBI Headquarters went only to a second Headquarters Supervisor newly assigned to the case and to the unit chief. Without referring to the recent review of evidence under the Foreign Agents Registration Act, the instructions stressed the "possible" violation by CISPES of that Act, the Neutrality Act, and munitions control laws. The investigative goals were restated broadly to include "penetration of local, regional and national levels of CISPES to obtain the best intelligence information" regarding CISPES contacts with the FMLN/FDR. Three isolated local incidents suggesting possible domestic violence were repeated and given the most sinister interpretation:

> As recipients are aware, intelligence and investigation has [sic] determined that CISPES local chapters have been obtaining information concerning the response times of emergency services to various U.S. Government buildings. One CISPES leader has claimed he has devised a plan [for a terrorist act in a particular city]. Another CISPES member may have been involved in threatening to bomb a TACA Airlines aircraft.

(The emergency response time report had come from Mr. Varelli in Dallas in early 1983, and the plan "devised" by a CISPES leader had been reported originally as a hypothetical discussion.) With little more than these three incidents to go on, the instructions went on to state:

> Many [sic] of these plans and discussions involve taking action if the U.S. becomes involved in Central America and particularly Nicaragua and El Salvador. It is noted that although most of CISPES members or supporters are unaware of and do not support violence or criminal violations, some of the key leaders and founders of CISPES were seriously involved in the Weather Underground and have been supportive of these types of actions in the past. It is feasible that the U.S. Government will not only continue support for the Salvadoran Government, but may increase that support. Based on intelligence received thus far this added support may trigger a terrorist response from some portions of the CISPES. It is already noted that several bombings in the Washington, D.C. area, although probably not perpetrated or directed by the CISPES, have occurred around CISPES meetings and were claimed as support for the Salvadoran guerrilla-terrorist organization. Investigation has demonstrated some contacts and/or connections between those responsible for the bombings and the CISPES.

The instructions also cited classified information that Salvadoran guerrillas themselves had elements capable of conducting terrorist activity in the United States and that "contacts between CISPES members and [those elements] have been noted. It is imperative that these connections be further explored. Obtaining this information will assist the FBI in the prosecution of any terrorist actions in the U.S. and may assist in preventing those actions."

The instructions provided the following explanation of "the propaganda and rhetoric issue":

> Certainly propaganda and political rhetoric of the CISPES is important to our investigation regarding a possible FARA violation. It is not, however, the main or only concern of this investigation. The purpose of this investigation is to determine the extent of the overall international terrorist support threat and international terrorist action threat CISPES poses to the U.S. Government.

Finally, the instructions said that concern about contacts of some CISPES members or leaders with Communist countries was not the main thrust of the investigation.

Shortly after these instructions went out, one field office reported to FBI Headquarters on a public meeting of a local Central American solidarity group, where a doctor spoke about medical problems among Salvadoran refugees and in a "rebel-controlled" area of El Salvador. It was announced that $900 had been raised locally for the "Salvadoran Medical Relief Fund," and a further $700 was collected. There was also discussion of encouraging Salvadoran refugees to seek refuge in local churches and efforts to increase awareness of events in Central America. The field office requested FBI Headquarters guidance for any further investigation. The reply was drafted by the second Headquarters Supervisor, who was newly assigned to the investigation, with a copy to the unit chief. It told the field office to "conduct the necessary investigation to identify members of [the group] and determine if they are engaged in terrorist acts or the supportive [sic] of terrorism inside the United States. If [the office] should determine that [the group] is not engaged or is not in support of terrorism, the case should be immediately discontinued."

6. Attorney General's approval of the use of a technique.—On November 16, 1984, Attorney General William French Smith approved the use of an investigative technique requiring his personal approval in the investigation of a local CISPES chapter. The technique was not, in fact, employed. Use of the technique would not have required a court order or judicial warrant in a criminal investigation, but did require the Attorney General's approval under the Attorney General's guidelines for international terrorism investigations. In granting the approval, the Attorney General's written communication to the FBI stated that CISPES was currently the subject of an FBI international terrorism investigation, that he was satisfied the requirements of the guidelines for the investigation had been met, and that use of the technique was considered necessary for specified investigative purposes.

While the technique was never used in the investigation, the approval process shows the levels of knowledge of the CISPES investigation within the FBI and the Department of Justice at that time. The principal Headquarters Supervisor drafted an "Action Memorandum" that was addressed from the Director to the Attorney General and dated September 28, 1984. Initials on the file copy indicate that it was approved at the level of Deputy Assistant Director, that copies went to the Terrorism Section chief, the unit chief, and a liaison office, and that the memorandum was delivered to the Office of Intelligence Policy and Review in the Justice Department. The memorandum stated the basis for the FBI investigation of CISPES nationally, with no information whatever about the particular chapter against which the technique was to be used.

In contrast to the previous documents which had been prepared to explain the predicate for the CISPES investigation, including letterhead memoranda disseminated to the Justice Department, this one was written in a way likely to give the casual reader the strongest impression that CISPES was a Communist-controlled organization, without actually saying so. The establishment of

CISPES was said to have "followed" a meeting between Fidel Castro and Salvadoran leftists. Cuban support for Salvadoran leftists was said to be "preconditioned" on "the development of a propaganda and support apparatus in the United States." CISPES was said to have been "organized as a result of a meeting" that was "instituted by" a leader of the Communist Party, USA, after conferring with a Salvadoran guerrilla leader. There is nothing in the CISPES file to indicate that any new information was used for this memorandum, nor did the memorandum actually assert that CISPES was controlled or directed by a foreign power or group.

The memorandum also repeated the three isolated incidents purportedly linking individuals involved with CISPES to possible terrorist violence, again using language that exaggerated the information reported to FBI Headquarters. Finally, the memorandum cited information from "sources" that CISPES "overtly collects money ostensibly for Salvadoran refugees but covertly directs the funds to the FMLN" and that CISPES had furnished non-lethal military supplies to the FMLN. Frank Varelli remained the sole source directly linking CISPES to covert FMLN funding.

After the Attorney General's approval was granted, another memorandum was prepared for the signature of the Executive Assistant Director for Administration, as Acting FBI Director, to request outside assistance in use of the technique. The same language was used, with the addition of an assertion that FMLN leaders furnished unspecified "direction" to CISPES leaders. Nothing was said about the particular local chapter involved. Initials on the file copy indicate that it was approved by the Acting Director and by the Deputy Assistant Director for the Criminal Investigative Division.

K. CONTINUING INVESTIGATION, JANUARY–MARCH, 1985

The scope and intensity of the FBI investigation of CISPES declined substantially in the early months of 1985. When the Dallas field office prepared another letterhead memorandum summarizing the investigation on March 4, 1985, it was disseminated to FBI Headquarters and 10 other field offices. In the transmittal communication, the Dallas office asked FBI Headquarters to designate the Washington field office as "office of origin" for three reasons: (1) the Washington office "would be in a better position to direct and control this investigation through their coverage of national headquarters;" (2) the Dallas office "has a relatively small CISPES chapter with little activity of significance at this time;" and (3) the Dallas office's former primary source (Mr. Varelli) "is no longer in operation."

The LHM itself subdivided the predicate for the CISPES investigation into four areas: propaganda, financial support, foreign contact, and civil disobedience. The discussion of propaganda cited political activities favoring the Salvadoran FDR/FMLN cause and participation in protest activities cosponsored by other groups, including Communist front organizations. One speaker was reported to claim that Salvadoran guerrillas obtained weapons from the black market in Miami. Under the heading of financial support were listed instances of transportation of medical supplies to support Central American revolutionaries: CISPES sponsorship of Salvadoran speakers, including alleged fundraisers for Salvadoran insurgents: recent source reports (not from Frank Varelli) that two local chapters were sending money to El Salvador; several instances of sheltering of Salvadoran illegal immigrants; organized travel to Nicaragua by one chapter; and intelligence that Salvadoran leftists were receiving funds from unidentified sources in the United States. The information on several contacts of CISPES officers with Communist country personnel did not indicate direction or control. The civil disobedience category included examples of demonstrations where arrests occurred, discussion of physical blockades and confrontations to obstruct an escalation of U.S. military involvement in Central America, and training for acts of nonviolent civil disobedience.

The LHM stated that the objectives of the investigation were to:

> 1. Identify contacts and communications links between CISPES leaders and Salvadoran guerrilla-terrorist organizational structure and leadership. . . .
> 2. Identify means of transmitting money and military supplies from U.S. to guerrilla organizations in El Salvador.
> 3. Identify means of shipping propaganda into the U.S.
> 4. Obtain information concerning preparation or plans for terrorist attacks in the U.S.
> 5. Identify leaders and key members of CISPES, who are in direct contact with representatives of Salvadoran guerrilla-terrorist organizations.

A notation on the transmittal communication indicated that this LHM was routed to the Justice Department review unit on March 14, 1985, but it was not in fact reviewed by that unit until June 3, 1985.

Meanwhile, the second Headquarters Supervisor sent the Assistant Director, the Director's special assistant, and other FBI officials a note dated March 12, 1985, reporting CISPES involvement in plans for a national demonstration and protest march in Washington, D.C., on April 19-22, 1985. The report came from a field office actively investigating one chapter. It indicated that as many as 100,000 demonstrators would participate and that acts of nonviolent civil disobedience would be staged.

L. CLOSING THE CISPES INVESTIGATION

1. Changes at FBI headquarters.—By mid-April of 1985, the possibility of closing the CISPES investigation was being considered inside the FBI. One field office with an active investigation of its local CISPES chapter recommended that the investigation be continued. It advised FBI Headquarters that its local chapter had "ties" to the FDR/FMLN, that it planned civil disobedience at its demonstrations, that participants included members of a separate domestic group involved in past acts of terrorist violence, and that it hosted FDR/FMLN fundraising speakers (although the funds transfer mechanism was unknown). This office solicited the views of five other FBI field offices on the matter of whether the investigation should continue.

A third Headquarters Supervisor was now assuming responsibility for the CISPES investigation. On May 3, 1985, in response to a report from another field office, the second Headquarters Supervisor provided the following guidance, with copies to the third Headquarters Supervisor and the unit chief. A review of the field office report at FBI Headquarters revealed "that there appears no justification for [the office] to maintain its investigation into CISPES as a pending investigation." The field office was "requested to review its investigation and if in fact there is no activity on the part of CISPES chapters in [the area] to indicate violence or connections with guerrilla groups operating out of El Salvador then this matter should be closed."

Meanwhile, Director Webster had received additional information about the CISPES investigation in preparation for testimony at a closed hearing of the House Permanent Select Committee on Intelligence. Earlier in 1985, at a public hearing before the House Judiciary Subcommittee on Civil and Constitutional Rights, Director Webster had been asked about press reports of FBI interviews of Americans who had traveled to Nicaragua. In this context, the Director's special assistant had examined the circumstances of those interviews and had learned that some of them were conducted as part of the CISPES investigation. The Director's special assistant discussed the CISPES investigation with the unit chief, who explained (incorrectly) that it was limited in scope to persons believed to be covertly supporting the FMLN. This information was given to Director Webster, who then told the House Intelligence Committee that the FBI's investigation was proper and appropriately limited.[14] The implications of this confusion are discussed in Part Four of this report.

The Committee has found in the CISPES files several isolated instances of CISPES-related FBI field office inquiries initiated on the basis of Americans' travel to Nicaragua and interviews of Americans regarding such travel. The files do not reflect, however, a systematic pattern of such interviews, nor is there any indication of FBI Headquarters guidance or direction to conduct such interviews. There was also at least one instance in which an FBI field office became aware of travel to Nicaragua by a local CISPES leader and chose to conduct no investigation.

A report in the CISPES files dated June 12, 1985, indicates the limited scope of the FBI's activities with respect to another group opposing U.S. policy in Central America. A field office told FBI Headquarters that a group of 40 people representing themselves as the Pledge of Resistance had entered a federal building and demonstrated at a Congressman's district office. They "distributed brochures advocating their opposition to U.S. intervention in Central America." After meeting with the Congressman's staff, some of the demonstrators remained until after the office closed, when they were given local police citations and "dispersed without incident." The FBI was not present and learned what happened afterwards from a local Federal Protective Service official. The field office sent the report to FBI Headquarters under the CISPES heading. A copy was routed to senior FBI officials, including the Assistant Director and the Director's special assistant. An accompanying note written by the third Headquarters Supervisor advised that "FBIHQ indices contain no record of Pledge of Resistance" and stated that "local

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[14] Statements of Rep. Stokes and Director Sessions. HPSCI Hearing. September 29, 1988, pp. 1 and 16–17.

Washington, D.C., news coverage on the evening of June 12, 1985, carried stories of Pledge of Resistance individuals demonstrating outside the U.S. Capitol in opposition to the U.S. Government's support of the Nicaraguan Contras." There is nothing in the CISPES files reviewed by the Committee to indicate the FBI was conducting surveillance of these activities or otherwise investigating them.

2. Justice Department guidance.—On June 3, 1985, an attorney with the Justice Department's Office of Intelligence Policy and Review (OIPR) read the letterhead memorandum on the CISPES investigation that had been prepared by the Dallas office on March 4. The Department attorney provided the following evaluation, as forwarded to the field by FBI Headquarters: "The information does not appear to meet the standards of the Attorney General's guidelines. It appears that this organization is involved in political activities, involving First Amendment rights, and not international terrorism."

A week later the Criminal Division of the Justice Department, in a memorandum to the FBI Director from Assistant Attorney General Stephen S. Trot, provided its assessment of whether information in two other Dallas field office memoranda on CISPES, dated April 2, 1984, and October 11, 1984, showed any violation of the Foreign Agents Registration Act. The Justice Department memorandum concluded:

> A review of the facts contained in the Dallas Division memoranda does not present evidence sufficient to establish an obligation to register under the Act by CISPES and/or organizations or individuals associated with them. Such an obligation can only be established if it can be ascertained that CISPES activities are within the ambit of Section 1(c) of the Act (which defines 'agent of a foreign principal']. In short, the Dallas Division memoranda do not indicate that [a Salvadoran leftist group] exercises any direction or control over CISPES organizations within the United States.

PART TWO—FRANK VARELLI, THE FBI AND THE CISPES INVESTIGATION

The preceding narrative traces in detail the actions taken by FBI Headquarters and numerous field offices in the investigation of CISPES. That investigation cannot be understood however, without an appreciation of the FBI's relationship with Mr. Frank Varelli, the FBI source whose allegations were crucial to both the opening and the continuation of that investigation. Although there were other sources of information in addition to Mr. Varelli, the FBI Director concluded that absent the Varelli information, there would not have been sufficient predication for an international terrorism investigation of CISPES or sufficient predication to continue the investigation.[15]

The story of the FBI's handling of Mr. Varelli is also, in turn, the story of his principal handler, Special Agent Daniel J. Flanagan, and of the Dallas field office that supervised Messrs. Varelli and Flanagan and the CISPES international terrorism investigation. The FBI Director concluded that the Dallas Division and FBI Headquarters failed in three crucial areas in operating Varelli as an asset. They failed to adequately conduct an essential background check in establishing Mr. Varelli's *bona fides* and failed to continually ensure Mr. Varelli's reliability and the accuracy of the information he was providing. And finally, they failed to provide adequate supervision and direction which resulted in an asset operating himself.

I. Frank Varelli and the FBI, 1981–82

Frank Varelli was born April 10, 1950 and named Franklin Augustín Martínez Varela, the son of a former Salvadoran Interior Minister and national police chief.

He came to the United States in 1971 as a college student and became a Baptist minister in 1977. Mr. Varelli joined the U.S. Army in 1978 and served as a chaplain for eight months before receiving an honorable discharge on the grounds of "Erroneous Enlistment." Earlier in 1978 he had led an Evangelistic Crusade in El Salvador. A 1978 typewritten "Confession of Faith" that Mr. Varnelli later provided to the FBI's Dallas field office stated that he was "anti-ecumenist, anti-World Council of Churches, anti-Communist" and "anti-Liberal and Modernist Movements."

Mr. Varelli returned to El Salvador in 1979. On April 2, 1989, Salvadoran guerrillas attacked the Martínez household in San Salvador and were repulsed, with Mr. Varelli playing a major role. In

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[15] SSCI Hearings, September 14, 1988, p. 121; HPSCI Hearing, September 29, 1988, pp. 7 and 18.

May of 1980, Mr. Varelli, his father and other family members immigrated to the United States.

A. VARELLI'S EARLY CONTACTS WITH THE FBI

Frank Varelli first came to the FBI's attention in November, 1980, when he was recommended to the Los Angeles field office by an American who knew his background. Mr. Varelli provided the FBI with a list of purported Salvadoran terrorists alleged to be residing in the Los Angeles area, and the Los Angeles office contacted him a total of five times. The FBI found no corroborating information regarding the Salvadoran emigrés listed by Mr. Varelli.

When Mr. Varelli decided to move to the Dallas/Ft. Worth area, the Los Angeles FBI office called the Dallas office, recommended Mr. Varelli to them, and obtained the name of a Dallas FBI Agent whom Mr. Varelli could contact. Mr. Varelli later alleged that the Los Angeles FBI office had told him to move to Dallas, but a subsequent internal FBI investigation found no evidence that this had occurred.

Mr. Varelli first visited the Dallas FBI office on February 3, 1981. On February 6, he provided the FBI with the last names of two Catholic priests in another city whom he characterized as "extremely leftist, and a potential danger," and possibly members of a Salvadoran terrorist group. The FBI found no corroborating information regarding these priests. On March 11, 1981, after another meeting with Mr. Varelli, the Dallas field office sought background information on him and an asset file was opened.

On March 24, 1981, Mr. Varelli told the FBI of three individuals in still another city whom he said Salvadoran authorities had identified as organizing protest demonstrations in the United States. One was reported to be a member of a Salvadoran terrorist group and to be receiving "instructions from leftist leaders in El Salvador." The FBI found no corroborating information regarding these persons.

Mr. Varelli's Salvadoran contact appears to have been an official in an intelligence unit of the Salvadoran National Guard (despite the incorrect characterization of the organization in some FBI communications as another Salvadoran security service). This relationship, which would continue for over three years, was noted in a letterhead memorandum sent from the Dallas field office on April 15, 1981, to FBI Headquarters and seven field offices informing them of the decision to use Mr. Varelli as an asset. On April 16, the Dallas Special Agent in Charge authorized FBI use of Mr. Varelli as a low-level source.

Indicative of Varelli's close ties to his native country is the fact that in mid-April, shortly after he was opened as an asset, he returned to El Salvador and made contact with an intelligence unit of the Salvadoran National Guard and apparently set up a channel for receiving and furnishing information on terrorist groups. The Committee has received assurances that this was done on his own, and not at FBI direction. Nevertheless, this should have caused both Dallas and FBI Headquarters to exercise extreme caution in their dealings with him and to ensure that a thorough background investigation was conducted to determine reliability.

Mr. Varelli's trip appears to have been paid for out of funds obtained from sources other than FBI. Three years later, the FBI would learn that the funds had been advanced to Mr. Varelli by an American to whom Varelli had apparently suggested the possibility of hiring themselves out to assassinate Salvadoran president José Napoleón Duarte.[16]

The cover letter for the April 15, 1981, letterhead memorandum advising of the information Mr. Varelli had provided cautioned "that majority of information in enclosed LHM is supplied by Bureau assets, and not substantiated by active investigation." The LHM itself, however, stated that the information was "furnished by sources familiar with the [Salvadoran terrorist group] in the United States and who have furnished reliable information in the past." According to the FBI's Inspection Division report, Mr. Varelli's handler in Dallas later "admitted . . . that he was in error in reporting Varelli as reliable since his reliability had not been established." The problems in Mr. Varelli's reliability and activities went unnoticed in part because Mr. Varelli's FBI handler himself proved unreliable.

B. VARELLI'S FBI HANDLER IN DALLAS

Daniel J. Flanagan was an experienced FBI Special Agent, but one who had no background in the international terrorism field when he was assigned that responsibility in the Dallas field office. As was reported in the press in 1986, Mr. Flanagan went through a period of severe stress between his arrival in Dallas in 1979 and his resignation five years later, including divorces, remarriages and financial reverses.[17] FBI Headquarters later discovered additional, similar episodes that could not have gone unnoticed by his superiors. The FBI Director concluded that several of these events should have prompted management action to assess Flanagan's security risk. They should also have prompted closer scrutiny of his work by his superiors.

C. THE FBI'S EVALUATION OF VARELLI AS AN ASSET

The records checks that were begun in March 1981, consisted of Dallas area police checks, a check within the field office and with FBI Headquarters to see if there was information on Mr. Varelli, a fingerprint check and a search for Mr. Varelli's U.S. Army records. There was no effort to check with local police in other parts of the country where Mr. Varelli had studied or worked, to ask other U.S. Government agencies whether they had relevant information on Mr. Varelli, or to follow up on the failure of efforts to find U.S. Government files with Mr. Varelli's fingerprints or military record. (The military record was finally found six years later, during an inquiry into Mr. Varelli's later allegations of FBI misconduct.) No thought was given, moreover, to polygraphing Mr. Varelli, despite the fact that his description of events leading up to his immigration varied from one account to the next.

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[16] See p. 78, below.

[17] Christi Harlan, "The informant left out in the cold," The Dallas Morning News, April 6, 1986, p. 1.

Special Agent Flanagan later stated that he believes Mr. Varelli "was completely credible, and since he was providing information concerning terrorist activities in the Dallas area, I was more interested in disseminating and acting on his information than I was in conducting an investigation of him." He characterized Mr. Varelli as "credible" in the April 15, 1981, memorandum before even completing the local or FBI Headquarters indices checks.

D. VARELLI AND CISPES IN 1981

When Mr. Varelli returned from El Salvador in late April, 1981, he brought with him many Spanish-language fliers and newspaper and magazine articles that he gave to Special Agent Flanagan and, in some cases, translated over the following three months. He also prepared capsule biographies of persons he considered Salvadoran terrorist leaders, illustrated with pictures clipped from Salvadoran newspapers. In May and June he provided several articles from *Réplica,* an anti-Communist Mexican magazine that attacked the Salvadoran government and President Carter, saw a Jesuit conspiracy behind the rise of Communist guerrilla groups in Latin America and, in one article, posited a tie between a Colombian guerrilla named Rosenburg, a Guatemalan leftist with the same last name, and the case of Julius and Ethel "Rosenburg" in the United States over 30 years earlier. One of the *Réplica* articles, describing a Catholic "Parish Plan" that Mr. Varelli would later say was the basis for CISPES activities, was written by Salvadoran Maj. Roberto D'Aubuisson, the alleged death squad leader who would soon found the ARENA Party in El Salvador.

On April 30, 1981, the Los Angeles field office asked the Dallas office for Mr. Varelli's assessment of certain people reportedly planning a coup in El Salvador. Mr. Varelli's comments were transmitted to FBI Headquarters, the Los Angeles office and four other field offices on May 8, 1981. They included the assertion that former Colonel Adolfo Majano, who had been a member of the first junta in 1979, had been "given one million dollars by President Duarte to organize a new terrorist group within the FDR. He was assisted by [Guillermo] Manuel Ungo, and Arch Bishop [sic] of El Salvador Rivera y Damas." The extraordinary allegation that President Duarte and the archbishop were financing a terrorist group did not elicit any response from the recipients of the cable. Obvious questions about Mr. Varelli's credibility were not raised.

On May 5, Mr. Varelli asserted to Special Agent Flanagan that he had been given access to confidential Salvadoran Goverment information on terrorists currently in the United States. He also noted his opinion that "many of the murders and violation of human rights are caused by the Treasury Police, not just the terrorist groups," and gave Mr. Flanagan a "hit list" published by the Secret Anti-Communist Army (ESA) in El Salvador.[18] The Dallas field office notified Headquarters of this on May 8, and sent translations of the list and of a purported captured guerrilla document on May 20 and 21. The Dallas office included Mr. Varelli's designation of those persons on the "hit list" most likely to be in the United States. On May 28, FBI Headquarters sent the list to three field offices, FBI legal attaches in Mexico City and Panama, and other U.S. Government agencies. The FBI recipients were asked to "attempt to identify and warn potential victims. Advise local police." One day later, the Dallas office cabled Headquarters and five field offices to report what it knew about the ESA and to warn that an investigation of the group might lead its members to suspect Mr. Varelli, as he moved in right-wing circles.

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[18] The State Department, in its report to Congress, Country Reports on Human Rights Practices for 1984 (Senate Report 99-6, February 1985, p. 514), stated that the "Treasury Police . . . intelligence unit [was] long considered the source of many abuses." The Senate Select Committee on Intelligence mentioned the Treasury Police in its October, 1984, report on Recent Political Violence in El Salvador, Senate Report 98-659; see below. p. 113.

In June of 1981, the Border Patrol arrested several illegal Salvadoran entrants into the United States, one of whom was identified as Ana Estela Guevara Flores. Mr. Varelli became convinced that this person was actually Norma Guevara (or Commandante Norma), a major Salvadoran guerrilla figure, as the Dallas office indicated to FBI Headquarters and seven field offices. A July 13, 1981, cable stated that Mr. Varelli's information regarding Guevara's affiliation with terrorist groups had been "confirmed by" another U.S. intelligence agency. The FBI found no evidence of such confirmation, although it is possible that the other agency could have confirmed the information about Norma Guevara's background without commenting on Mr. Varelli's identification. Mr. Varelli's handwritten memo to Special Agent Flanagan makes clear that his information came from an intelligence unit in the Salvadoran National Guard.

In a follow-up cable on July 23, 1981, Special Agent Flanagan set forth Mr. Varelli's reasons for believing the illegal entrant to be Norma Guevara. One was that Amnesty International was defending her against deportation proceedings, and "source feels that if she were not involved in a terrorist movement, this group would not become involved." The San Francisco field office was asked to check its files for information on Amnesty International. A later Dallas cable indicates that San Francisco replied that Amnesty International was "independent of any government political faction, or religious affiliation."

The U.S. Embassy in San Salvador provided fingerprints of Norma Guevara that failed to match those of the illegal entrant. Mr. Varelli, as recounted in a cable of August 6, 1981, replied that the fingerprints:

> were supplied by . . . a very honest, hard working member of the National Guard. However, [he] more likely received the prints from [another Salvadoran security service], who according to [Mr. Varelli], has been infiltrated by left wing sympathizers.
>
> [Mr. Varelli] expressed disbelief that the fingerprints did not match those of [Ana Estela Guevara Flores], and still insists that [she] is Norma Guevara. [Mr. Varelli] stated he would not be surprised if the prints were switched by members of the [other Salvadoran security service].

The FBI files reflect no further discussions of Guevara's identity or the implications of the incident for Mr. Varelli's credibility. (An April 11, 1986, opinion by the U.S. Court of Appeals for the Fifth Circuit comments that the U.S. request for Norma Guevara's fingerprints had become public in El Salvador: "The possibility that the notorious Commandante Norma had been apprehended in Texas received a good deal of play in the Salvadoran press." [19])

Also in June 1981, Mr. Varelli told Special Agent Flanagan of another Salvadoran terrorist group and provided a list of possible group members in the United States. Mr. Flanagan's cable of June 18, 1981, to FBI Headquarters and six field offices stated that Mr. Varelli "is in constant communication with [a unit of] intelligence officers in El Salvador, which he names. . . ." This unit was said to be the source for the list of terrorist group members.

On June 24, 1981, Mr. Varelli told Special Agent Flanagan that "the FDR-FMLN has launched an attack on the United States." The basis for his assertion was a speech by Salvadoran leftist Ramon Mayorga Quiroz on April 27, 1981 (a copy of which Mr. Varelli had clipped from a Salvadoran newspaper during his visit there). Mayorga asserted in that speech that "180 groups of solidarity with El Salvador have been created within the United States."

Special Agent Flanagan reported this in a cable to FBI Headquarters and seven field offices on June 29, 1981. He wrote that Mr. Varelli "advised that the only way to determine the extent of activity of these groups is to join one. Thus, he is attempting to infiltrate a group in Dallas, Texas." Mr. Varelli was also "sending for literature put out by these groups," including CISPES, the Washington Office on Latin America, Coalition for a New Foreign and Military Policy, the International Religious Task Force on El Salvador, the Religious Task Force on El Salvador, and Amnesty International."

On July 13, 1981, Dallas cabled FBI Headquarters asking permission to convert Mr. Varelli to a higher-level status and to pay him up to $500 per month. The cable noted that Mr. Varelli "has been attempting to infiltrate various El Salvadorian [sic] solidarity groups in the Texas area, by physically meeting with various group members in the Dallas area and sending for literature offered by these groups throughout the United States."

FBI Headquarters replied on July 17, 1981, approving the change in Mr. Varelli's status. Although no investigation had been authorized regarding CISPES *per se* Mr. Varelli was authorized to infiltrate CISPES on the theory that it was sub-unit of another Salvadoran group that was already the subject of an FBI investigation. The FBI later determined that this information was erroneous and that, in fact, nowhere in the investigation of the other group was that assumption set forth. The effect of the decision to allow Mr. Varelli to infiltrate the Dallas chapter of CISPES was that the use of this intrusive technique began even before the Foreign Agents Registration Act inquiry on CISPES was authorized in September, 1981.

On August 12, 1981, Mr. Varelli attended his first CISPES meeting—a public fund-raising dinner at which the featured speaker was then-Congressman Jim Mattox. According to a cable sent by the Dallas field office to FBI Headquarters and five field offices, Mr. Varelli "advised that the Maddox [sic] speech was extremely critical of President Reagan's policy towards El Salvador, and those in attendance were very agitated by the speech. [Mr. Varelli] feared that such agitation could be harmful to President Reagan." Mr. Varelli also picked up some CISPES literature, which was quoted in the Dallas cable.

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[19] 786 Fed. Rep. 2d Ser. 1242, 1244.

On August 20, 1981, Mr. Varelli "attended a closed meeting of the Dallas, Texas chapter of the CISPES [sic] on invitation from the local leader." At this meeting of "members and avid supporters of CISPES," Mr. Varelli "was elected to head a committee responsible for compiling various mailing lists and also to provide security" through "code names for various members of the local CISPES group." The Dallas field office cable of August 25 indicated that "due to the fact [Varelli] is the only El-Salvadorian [sic] in the CISPES group, he has become very popular" and noted that most of the members had never been to El Salvador.

On September 4, 1981, Mr. Varelli gave Special Agent Flanagan a handwritten memo on the "Parish's Plan" that was based (without attribution) upon Varelli's translation of the Roberto D'Aubuisson article in *Réplica*. The import of Mr. Varelli's report was as follows:

> The clergy is being the arguitecs [sic] of the Communist penetration in the U.S. through CISPES. It is important to mention that not all priests, nuns, protestan [sic] pastors are Communist. But there is an alarming majority.

The CISPES investigation for possible violations of the Foreign Agents Registration Act (FARA) was opened on September 3, 1981. On September 8, FBI Headquarters ordered the closing of all international terrorism investigations relating to El Salvador—both on the left and on the right. No reasons appear to have been articulated for this instruction, but the Dallas field office replied on September 22 that Mr. Varelli had been "instructed . . . to discontinue his membership in local CISPES chapter and cease project work he was completing on El Salvadorian [sic] terrorist groups."

Mr. Varelli nonetheless appears to have continued handling specific inquiries. A handwritten memo of September 18 recounts phone calls that he made to an intelligence unit in the Salvadoran National Guard and the information they provided in response. A Special Agent Flanagan memorandum of October 27, 1981, to the Dallas Special Agent in Charge states that Mr. Varelli "is compiling elaborate index system which will enable the Bureau to immediately identify the various El Salvadorian Terrorist Groups" and "submitting reports and literature on various solidarity groups in the U.S." A handwritten memorandum of December 1, 1981, from Special Agent Flanagan to the Special Agent in Charge summarizes Mr. Varelli's status at that time:

> Source has provided valuable information re El Salvadorian [sic] terrorist groups. Since the Bureau has closed all investigation re El Salvador, contact has been kept without information being disseminated to files. It is anticipated the El Salvadorian field will re-open, thus contact with [Mr. Varelli] will be continued.

On February 24, 1982, Dallas cabled FBI Headquarters that Mr. Varelli "is being placed in closed status by Dallas Division, due to Bureau advising that no investigation should be conducted regarding El Salvadorian [sic] activities." It is not clear what prompted this action over five months after the El Salvador terrorism cases had been closed. In all likelihood, the formal closing of the CISPES

FARA case with a letter to the Justice Department on the previous day led Dallas to give up on its hope of resuming Mr. Varelli's penetration of the local CISPES chapter.

E. MARCH 1982: VARELLI GOES ELSEWHERE

On March 29, 1982, Mr. Varelli contacted another U.S. Government entity and offered his services to them. They were led to understand that Mr. Varelli was calling at the suggestion of the Dallas FBI field office; that he had been a paid FBI source approximately 13 months; and that, because of a recent FBI policy decision, his services were no longer required.

It is not clear whether the FBI or Mr. Varelli made the first contact with the other U.S. Government office, or who it was who said that Mr. Varelli was acting on the suggestion of the FBI. FBI inspectors have advised that Special Agent Flanagan, Mr. Varelli's FBI handling Agent in the Dallas field office, denies knowing of Mr. Varelli's 1982 contacts until 1984.

Mr. Varelli told the other U.S. Government office his life story and said that he had gone to El Salvador in July, 1981, at the request of the FBI. Hr provided a list of 84 Salvadorans with whom he claimed close association, including National Guard Commander Vides Casanova, two National Guard intelligence officers, the Director of Communications, and ARENA Party leader Roberto D'Aubuisson. He said that, because of his contacts in an intelligence unit of the National Guard, he had been able to obtain information and documents from their files—including a list of 304 Salvadorans studying in the Soviet Union and a description of 18 subversive groups.

Mr. Varelli also told the other U.S. Government office that, through friendship with Salvadoran officials, he had access to documents confiscated from the Catholic University in San Salvador. He said the officials hoped to use these documents to write a book which they claimed would show how many of the current and potential leaders of El Salvador, across the political spectrum, are linked with international communism. Such a book would be treasonous, and they had asked Mr. Varelli to assist them in getting the documents to the United States and having them published in book form.

Offices of the other U.S. Government organization expressed initial interest in Mr. Varelli, but posed a series of probing questions for him to establish his access and reliability. By the end of May, 1982, there was a consensus within the other U.S. Government organization that Mr. Varelli's information had come primarily from open sources for some time.

An official later recalled that Mr. Varelli claimed to be very close to prominent Salvadorans and appeared to be exaggerating. The U.S. Government organization did not follow up on Mr. Varelli's offer of services. They did not learn until mid-1984 of Mr. Varelli's re-establishment of a relationship with the FBI in November, 1982.

F. NOVEMBER, 1982: VARELLI BECOMES AN FBI ASSET AGAIN

On November 15, 1982, the Dallas field office called Mr. Varelli and asked whether he would be willing to work for them on Salvadoran cases again. The next day, they informed FBI Headquarters that "due to Bureau authorizing investigations on certain subjects, source will be re-opened." One week later, in a memorandum to the SAC of the Dallas field office, Special Agent Flanagan summed up the situation as follows:

> [Mr. Varelli has been reopened due to increased activity by El Salvadorians [sic] in the United States. . . . [Mr. Varelli], the most knowledgeable and reliable El Salvadorian asset in the Bureau, was responsible for presenting the threat from El Salvador terrorists to the Bureau, which resulted in Dallas opening numerous . . . investigations throughout the country.
>
> The Bureau, after approximately ten months of investigations, closed all El Salvador cases, reasons not set forth. Bureau has now opened all investigations that were closed, and advised . . . that there will be a conference . . . to discuss the El Salvador threat soon.

The Dallas field office and FBI Headquarters did not review Mr. Varelli's asset file when they reactivated him in November, 1982. The FBI Director concluded that such a review should have been conducted. Had the Dallas office done a thorough review of their files, they ought to have noted Mr. Varelli's inconsistent stories regarding his background. Had they checked with other U.S. Government organizations, they would have found one agency's negative appraisal of Mr. Varelli.

Special Agent Flanagan met weekly with Mr. Varelli and had him prepare background information and charts on Salvadoran terrorist groups for use at the Quantico conference of March 6–9, 1983. Mr. Varelli addressed that conference on the first day. Mr. Varelli also provided the FBI information on Farid Handal's background, activities and location that he had obtained from his Salvadoran contact, who was named in a Dallas field office cable to FBI Headquarters and six field offices.

As indicated in Part One, one participant in the Quantico conference was an FBI official with experience in dealing with Central America and other elements of the U.S. intelligence community. Shortly after the conference, he advised FBI Headquarters, the Dallas office, and nine other offices of a new source that the FBI could use to obtain information on activities in the United States "supportive of leftist terrorism in EL Salvador and foreign direction of such activities." He suggested that the Dallas office "use caution in directing [Mr. Varelli] relative to source's direct contacts with Salvadoran intelligence and law enforcement authorities in El Salvador to avoid . . . confusion. . . . This suggestion appears to have been ignored.

II. Varelli and the Second CISPES Investigation

A. 1983–1984: VARELLI AS THE PRINCIPAL SOURCE

On March 30, 1983, the FBI opened an international Terrorism investigation of CISPES. On April 14, FBI Headquarters authourized Mr. Varelli's infiltration of the Dallas chapter of CISPES. Headquarters warned that additional approval would be required if Mr. Varelli were to assume "a position which will influence the activity of the organization." Headquarters also gave basic guidance regarding the limits of the investigation:

> Dallas should instruct this asset that he is only to report on the leaders, or other persons about whom he has knowledge, who are knowingly, repeat, knowingly aiding and abetting the Salvadoran guerrillas with monetary and other support, or are in contact with Salvadoran leftists. It should be stressed to this asset that he is not to report on activities of individuals within this organization concerning their exercise of the rights guaranteed by the Constitution of the United States. As it has been previously noted [sic], many of the members of CISPES contribute, based upon political ideology, and are unaware that their support monetarily or otherwise goes to the aid of the Salvadoran guerrillas conducting terroristic activities in El Salvador. The key to investigation of members and leaders of the CISPES are those individuals who are aware that the support given by CISPES goes to aid in the above terroristic activities.

On May 11, 1983, Mr. Varelli attended his first CISPES meeting in over a year. He reported on attendance at the "closed meeting," the chapter's committee structure, its financial status, and its plans to boycott General Foods and to get area churches to proclaim themselves sanctuaries for Salvadoran refugees. The head of the chapter had asked for a volunteer "to travel to Houston and deliver several boxes of 'school supplies' to [a foreign diplomatic establishment] in Houston, Texas." A cable from the Dallas field office to FBI Headquarters on May 16 asked Headquarters:

> To advise if [Mr. Varelli] can transport boxes of school supplies to [a foreign diplomatic establishment] in Houston, and what procedure can be taken to determine true contents of boxes, specifically what measures can be lawfully taken by [Mr. Varelli] to open or X-ray the boxes.

Two weeks later, after FBI Headquarters had advised the Dallas field office on physical search procedures pursuant to U.S. law and Executive Order 12333. Mr. Varelli was still trying to become the courier for the boxes. Mr. Varelli "reemphasized the fact that he has serious doubts that these cartons contain school supplies." There is no indiction, however, that he ever obtained the boxes or determined their contents. On June 8, Mr. Varelli left a CISPES reception before its conclusion because he was afraid that some Salvadoran visitors would recognize him.

The next day, Mr. Varelli went to Houston anyway, with the approval of the Dallas field office, to survey the CISPES situation in that city. His report of June 16, 1983, indicates that after meeting with two FBI Special Agents from the Houston field office, he went to the site of a CISPES function in a poor section of town, but did not go inside. Mr. Varelli did report, however, on leftist views expressed on Spanish-language radio stations, also noting one Salvadoran restaurant that was promoted by the stations. He also made pretext phone calls to local organizations to find out what groups might help an illegal alien.

Mr. Varelli visted friends and relatives on this trip, and recommended some of them as FBI assets. One was a university student whom Mr. Varelli acknowledged smoked marijuana and "popped pills;" Mr. Varelli suggested that money would be the main motivation for this person. Another potential asset had ties to former Salvadoran officials and was probably subject to some of the same limitations (as an asset on this topic) as was Mr. Varelli himself. After a second trip to Houston in August, Mr. Varelli argued that the recruitment of such assets could lead to a national network under the Dallas office. One September 1, the Dallas field office endorsed Mr. Varelli's recommendation. The Committee did not determine whether the above persons ever became FBI assets.

FBI Director Sessions was especially concerned with respect to the manner in which Mr. Varelli's case agent handled his information—accepting the reports with little or no corroboration, and sometimes embellishing them further. According to FBI experts, in handling assets, one of the key elements to success is the verification of the accuracy of the information being furnished. This presents difficulties at times to the handling Special Agent and supervisor, expecially in foreign counterintelligence and international terrorism matters, since many times this information is not reasonably verifiable. But FBI experts say that solutions to this do exist and an asset's information can be verified through other agencies, the use of a polygraph, or the appropriate caveat by office of origin to show that the information is not verifable or is an analysis by the asset of publications he has obtained.

Two examples of what the FBI Director found to be inaccurate and/or embellished reporting on the part of both Mr. Varelli and Special Agent Flanagan were espeically serious since they involve Mr. Varelli's reporting on events during CISPES meetings. First, a Dallas field office cable of May, 1983, reports on a CISPES meeting attended by Mr. Varelli during which a slide presentation was given entitled, "Basta Ya." According to this cable, following this presentation, a financial statement was given to the group by one of its leaders claiming that their chapter had collected $8,000 the previous month and had managed to send $2,000 of it to the liberated zones in El Salvador. A handwritten report of this meeting appears in one section of the Dallas file, however, and although a thorough description of the "Basta Ya" presentation is set forth in that report, no where is there any mention of any financial status report being presented or money being sent to the liberated zones.

Secondly, there is a written report of a telephone conversation that Mr. Varelli had with one of the CISPES leaders on May 26, 1983. In this report, Mr. Varelli mentions that he had asked the local CISPES leaders what they needed most and was told that they always needed money for "medical supplies" for the liberated zones in El Salvador. However, when Special Agent Flanagan reported this contact to FBI Headquarters, he left out "medical supplies" so that it read "money for the liberated zones of El Salvador." These reports are especially significant in both their omissions and embellishments, since a key predication to the CISPES investigation was its alleged funneling of funds to the guerrillas in El Salvador.

On June 22, 1983, the Dallas field office sent FBI Headquarters a letterhead memorandum summarizing the CISPES investigation, for transmittal to the Justice Department. The LHM memorandum made extensive use of information provided by Mr. Varelli, including the first allegation that the Dallas chapter's "Research committee . . . [would pick] possible future terrorist targets. This committee will call in false police or fire reports, and time the responses of various safety departments. They also prepare reports dealing with power plants, and communication networks." This allegation would be repeated in future LHMs, although no further information appears ever to have been developed on it.

A day later, the Dallas field office sent to FBI Headquarters and eleven field offices "a list of active members of the FMLN in El Salvador who, according to [Mr. Varelli], would pose a serious threat to the United States should they enter due to their potential to conduct terrorist acts within the United States." Included on this list of supposed terrorists were such prominent figures as José Napoleón Duarte, Vice President Pablo Mauricio Alvergue, Foreign Minister Fidel Chavez Meña, Christian Democratic Party official Julio Rey Prendes, and former U.S. Ambassador Robert White. The Committee is not in a position to evaluate the over 390 other names on the list. But the lack of both knowledge and management supervision in both the Dallas field office and FBI Headquarters was underscored by their failure to react to Mr. Varelli's inclusion of such unwarranted names in his list of dangerous persons.

By September of 1983, Mr. Varelli was compiling (from open sources and from an intelligence unit of the Salvadoran National Guard) information on Salvadoran terrorists that was circulated to other FBI field offices as entries in a Terrorist Photo Album for El Salvador, modeled on an existing album of terrorists from another region. An earlier report on Salvadoran terrorists combined an open source text of a statement by a Salvadoran guerrilla defector with a claim that the terrorists were infiltrating into the United States, which Mr. Varelli sourced to "his brother" and "talking with relatives and friends in El Salvador."

Also by September, Mr. Varelli was billing the FBI for his purchases of open source materials. For that month, the items included copies of *Newsweek, Time, U.S. News and World Report,* publications of Congressman Larry McDonald's group Western Goals, and a donation to Moral Majority so as to receive their periodic *Report.* Mr. Varelli also billed the FBI for his purchase of the novel *The Spike,* of a Jeane Kirkpatrick book, and of a book on Senator Edward Kennedy at Chappaquiddick.

In a Dallas cable of September 19, 1983, Mr. Varelli provided his first reference to possible CISPES targeting of the Republican National Convention scheduled for August of 1984, stating that CISPES nationally was making such plans. FBI Headquarters requested more details of these plans and Dallas' response was that Mr. Varelli had recently received literature from CISPES in which a topic of discussion at its next meeting would be the Republican National Convention. The Dallas response offered no other facts supporting the original statement. FBI Headquarters subsequently furnished the original reporting of the disruption plan to eleven other field offices. The lack of supporting details and an evident embellishment on the part of Mr. Varelli are further examples of what the FBI Director found should have alerted the case Agent, field supervisor, and FBI Headquarters supervisor that Mr. Varelli's reliability was suspect.

In November of 1983, a Dallas field office cable to FBI Headquarters commented that Mr. Varelli "has not been active in CISPES activities recently due to the fact he fears for his safety." Mr. Varelli and his case agent were active, however, in suggesting "a more aggressive approach" for the FBI: closer liaison with Mr. Varelli's contact in an intelligence unit of the Salvadoran National Guard. On November 4, 1983, the Dallas field office sent a cable to FBI Headquarters on "ways of ridding the U.S. of terrorists wanted in El Salvador." They proposed that the Salvadoran intelligence unit provide information to the FBI that could lead to deportation actions. As a first step, they suggested an FBI conference to which they would invite Mr. Varelli's principal contact, who would "meet with Bureau personnel only, as distinguished from other U.S. Government entities, to discuss the terrorist threat from El Salvador, currently in the U.S. and to provide the necessary documents." The contact "would travel to the U.S. on a visitors visa. He stressed that he will not meet with Embassy or [FBI legal attache] personnel, as he does not know whom he can trust." The conference was indeed held; Mr. Varelli's contact was not invited, but Varelli's liaison relationship with him continued.

In December of 1983, Mr. Varelli traveled to Washington with FBI Special Agent Flanagan "to talk to people, to make contacts, obtain more documented information, to visit the local DC CISPES chapter and to learn if Salvadoran radicals living in that area had any role in the latest bombings." Mr. Varelli's report on that trip indicates that he never actually met any Washington members of CISPES or attended any of their meetings. He did report on several left-wing bookstores, however, as well as some churches that he suspected of harboring illegal aliens and a local hotel which his cousin's wife (who had once worked there) said was an employer of "undocumented Salvadorans that boast of being members of the FMLN." Mr. Varelli attempted unsuccessfully to locate a lawyer who reportedly would provide false green cards to illegal aliens. He was more successful in visiting the headquarters of Western Goals, where he obtained more right-wing literature at a discount price for ministers.

On February 14, 1984, the Dallas field office sent FBI Headquarters and 15 field offices Mr. Varelli's "updated list of leftist organizations currently operating in El Salvador." This five-page list included not only leftist organizations, but all of El Salvador's political parties (including ARENA); the Central American Common Market; AID (the U.S. Agency for International Development); AIFLD (the American Institute for Free Labor Development of the AFL–CIO); and the Consumer Price Index.

An especially serious example of embellishment occurred later in February, when Mr. Varelli alleged that an issue of *Nosotros*, the newspaper of the Casa El Salvador Farabundo Martí (CESFM), contained "threats against President Reagan." A Dallas cable of February 28, 1984, based upon this assertion, was sent to FBI Headquarters and 27 field offices. FBI Headquarters of Dallas further details concerning these implied threats and Dallas provided seven and one-half pages of verbatim translations which, upon review, failed to indicate any implied threats against the President of the United States or other U.S. officials. This example of embellishment of information on the part of Mr. Varelli was even more significant to the FBI, since the information in the initial Dallas cable reporting these implied threats was disseminated to the U.S. Secret Service and no follow-up was sent clarifying the additional details received from Dallas.

Mr. Varelli added to his translations the following advice:

> When reading the quotes always keep in mind that the communist used a or give a different meaning to some terms, for example when they say that the people is at war with Reagan that means: That the revolutionary movement is going to fight Reagan in every front and in any way possible. In El Salvador and the United States, in conventional warfare and with terrorism, sabotage, extortions, etc.

Apparently not all of Mr. Varelli's accusations from this period were accepted and disseminated by the Dallas field office. The Varelli file in that office includes one memorandum accusing major U.S. foundations (e.g., the Ford, Rockefeller and Tinker Foundations, The Woodrow Wilson Center, the Institute of International Education and the Social Science Research Council) of aiding the Cuban intelligence service. Another memorandum accuses former U.S. Ambassador Robert White of having a role in the assassination of Archbishop Oscar A. Romero. Neither appears to have been disseminated further.

On April 2, 1984, the Dallas field office sent FBI Headquarters and 58 field offices a second letterhead memorandum, summarizing progress in the CISPES investigation, to be transmitted to the Justice Department. This LHM repeated several Varelli allegations contained in the similar memorandum of June 22, 1983, and summarized the results of his attendance at CISPES meetings through June, 1983. There is no indication that Mr. Varelli attended any additional CISPES meetings prior to the date of the 1984 memorandum. The LHM does contain "a list of groups, either in support of CISPES or connected with CISPES in some fashion," apparently compiled by Mr. Varelli from open source leaflets that mentioned the organizations in some way or other. Among the 138 groups listed are SANE, Peace Links, Washington Office on Latin America, Oxfam-America, Fellowship of Reconciliation, the ACLU, Democratic Socialists of America, New Jewish Agenda, the U.S. Catholic Conference and Amnesty International.

Appendix to the LHM are "Dallas Comments," including the following:

> Investigation has determined that CISPES is very closely connected with the United States Catholic Church. The Church, who agrees with most CISPES philosophy, have set aside various sanctuaries to be used to house illegal Salvadorans in the United States. . . . [Mr. Varelli's] information has determined that possibly these sanctuaries house FMLN guerrillas and possibly is a storage place for weapons. The Catholic Church has openly boasted that it is free to protect these refugees without being concerned of local or Federal law enforcement agencies.

B. 1984–1985: VARELLI'S ROLE UNRAVELS

Mr. Varelli's case agent, Special Agent Flanagan, then went to Washington to brief FBI Headquarters personnel on the progress of the CISPES investigation and to attend a conference at Quantico with representatives of other offices working on the case. On April 8, 1984, Special Agent Flanagan's car was burgled and the letterhead memorandum on the investigation was stolen. The next day, Mr. Varelli was told to discontinue any CISPES contacts while the FBI determined to what extent the investigation had been compromised. Mr. Varelli resumed activity in late April or early May, attending a CISPES meeting on May 2.

On May 15, 1984, while Special Agent Flanagan was at FBI Headquarters, Mr. Varelli called the Dallas field office to register some complaints. He told them that Mr. Flanagan had been keeping some of the asset funds that Mr. Varelli was due and had given him classified documents to keep in his home while working on the CISPES investigation. (Mr. Varelli later reported that he had first raised these matters in April with FBI Special Agents from the Dallas, San Antonio and Houston field offices.) The next day, Special Agent Flanagan, in a polygraph examination, admitted giving Varelli classified documents. On May 17, 1984, Mr. Flanagan admitted withholding asset payments from Mr. Varelli; made $1,000 restitution to the FBI; and resigned. On the same day, the SAC in Dallas went to Mr. Varelli's home and received the classified documents, along with a handwritten statement from Mr. Varelli. The SAC's failure to make a record of the documents (which would have demonstrated a chain of custody) was one reason why the U.S. Attorney and the Justice Department later declined to prosecute Special Agent Flanagan.

On May 18, 1984, the FBI Headquarters supervisor of the CISPES investigation flew to Dallas and, along with the Special Agent who had taken over as Mr. Varelli's case agent, debriefed Mr. Varelli on the details of Special Agent Flanagan's skimming of funds. In the process of learning about Mr. Varelli's expenses, the FBI Special Agents were forced to come to grips with Varelli's phone calls to an intelligence unit of the Salvadoran National Guard. They also learned from him that he had told various Americans and Salvadorans of his work for the FBI, thus compromising in some measure the CISPES investigation. They instructed Mr. Varelli not to make any long distance calls without prior approval and not to tell others of his FBI relationship.

By May 30, FBI Headquarters had decided to polygraph Mr. Varelli so as to determine whom he had told of his FBI work and "what type of information [Mr. Varelli] may have provided to the Salvadorans." But his supervisors continued to feel that "if [Mr. Varelli] has not compromised his relationship with the FBI or has not compromised our investigations through his contacts with Salvadoran Government officials, he can be of great benefit to the FBI in the Salvadoran terrorism investigations." They instructed Mr. Varelli "to penetrate the inner circle leadership of . . . CISPES locally and obtain and furnish information concerning their plans and activities." Mr. Varelli was also reminded not to collect information on "political rhetoric and activities not otherwise connected with terrorist activities or plans." In late May, while the issues of Special Agent Flanagan's skimming of funds and Mr. Varelli's compromises of his FBI relationship were still active, the U.S. Secret Service learned of a report by a former employer of Mr. Varelli, to the effect that Mr. Varelli had once proposed assassinating Salvadoran President Duarte. The FBI decided to include this matter in Mr. Varelli's polygraph, but first raised it on June 1, 1984, in a debriefing of Mr. Varelli regarding whom he had told of his FBI relationship. Mr. Varelli charged that it was the former employer who had proposed the assassination, on three occasions.

On June 7, 1984, Mr. Varelli was polygraphed in Dallas. Mr. Varelli listed some 35 people whom he had told of his FBI ties, including six Salvadorans. He denied having proposed the assassination of President Duarte, but the polygraph operator concluded that Mr. Varelli was being deceptive. In a post-test interview, Mr. Varelli began to hedge and then admitted that "it was likely that he (Varelli) initiated the subject of someone shooting or killing Duarte. . . . He also admitted that he may have brought the same subject up at a later time to see if . . . [his employer] was still interested in some plot against Duarte. Varelli insisted he did not intend to go through with hiring anyone to kill Duarte." Mr. Varelli insisted that he had prepared a report for Special Agent Flanagan about this, but no such report could be found in FBI files.

The polygrapher asked Mr. Varelli if he had ever lied to the FBI. After admitting to some lies, Mr. Varelli became angry over the issue of money owed to him by the Bureau. Alternating between anger and tears, Mr. Varelli at one point pulled a pistol out of his briefcase and declared that he had taken risks for the FBI and deserved to be paid for this. He accused the FBI of trying to get rid of him, and threatened to "resign" as an asset.

On July 19, 1984, FBI Headquarters reported to Dallas on its technical review of the polygraph exam: "review personnel concur with the results of the examination." This meant that while Mr. Varelli's responses on the Duarte plot had shown deception, his answers on the people whom he had told about his FBI connections (and perhaps also on his relations with the Dallas FBI office) had not shown deception. A later technical review, completed in April, 1987, after Mr. Varelli had made public accusations of FBI misdeeds, concluded that Mr. Varelli's responses to all three series of polygraph questions had shown deception.

Notwithstanding his emotional outburst, by the end of June, Mr. Varelli was back in the Dallas field office's good graces. His new case agent summed up the situation as follows:

> [Mr. Varelli] underwent a traumatic crisis in May, 1984, however, since that time appears to have returned to a stable condition, and the information furnished, even though singular in nature, appears to be reliable.

In early July, FBI Headquarters proposed using Mr. Varelli only through the Republican National Convention and the summer Olympics in Los Angeles. They added that information from Mr. Varelli's Salvadoran contacts "must be segregated and reported with appropriate caveats regarding its origins and possible disinformation intentions." Headquarters was also concerned that the Soviets might have been able to intercept Mr. Varelli's phone calls and tell the Salvadoran terrorist groups. On July 9, 1984, Dallas defended the use of Mr. Varelli, at least for the present:

> It is too early to assess [Mr. Varelli's] full potential, taking into consideration the events of the past and the changes as to the parameters of his activities. It may be possible to get [Mr. Varelli] into a position in the CISPES organization to provide invaluable information and insight regarding that organization. There is also the possibility that because of past events, [Mr. Varelli] will never be able to regain the lost ground. More time is needed to make that judgment if the best interests of the Bureau are to be served.

During July, the FBI moved to determine how much compensation to offer Mr. Varelli. Because the funds that had been withheld from him were considered possible evidence for prosecution of Special Agent Flanagan, Mr. Varelli had not been paid in some time.

In the meantime, Mr. Varelli told an acquaintance of his problems with FBI and his belief that CISPES intended to disrupt the Republican National Convention and possibly assassinate President Reagan. The acquaintance knew a conservative activist in the Washington area, to whom he passed Varelli's concerns. The activist in turn attempted unsuccessfully to contact a member of the NSC Staff and gave the information to a friend in the Central Intelligence Agency. The CIA informed both the FBI and the Secret Service.

On August 7, 1984, the FBI offered Mr. Varelli a lump sum of $2,825 in settlement of his claims against the Bureau. Mr. Varelli rejected the offer and was asked to "prepare a detailed list of expenses/services for items not previously discussed." The Dallas field office then suspended operational tasking of Mr. Varelli pending settlement of his claims.

On August 9, Mr. Varelli was interviewed regarding his allegation of CISPES plots to disrupt the Republican National Convention. Mr. Varelli said that CISPES members had discussed:

> Running in front of the presidential motorcade to stop traffic and then have other members take action. . . . When asked what action would be taken, [Mr. Varelli] said he has heard from some priests that there are about 200 rocket launchers missing from U.S. military bases and they might be used. However, [Mr. Varelli] did not have any specific information, just speculation.

Mr. Varelli also cited information on another point that could only have come from classified FBI cables sent by another field office, information that was presumably given or told to him by Special Agent Flanagan.

On August 10, Mr. Varelli telephoned the Dallas field office and asked that his relationship with the FBI be terminated. He called this a "resignation," as Mr. Varelli considered himself to be an FBI employee. In the FBI's view, an asset is never an employee, even though he may be paid a salary and required to report the income to the IRS.

On August 14, 1984, after the CIA informed them of the August 9 interview, the U.S. Secret Service interviewed Mr. Varelli. The substance of his allegations was the same as that in the previous interview.

The Secret Service sent the FBI the following report of its August 14, 1984, tape-recorded interview with Frank Varelli (referred to by his Spanish surname, Varela):

> Varela was interviewed extensively concerning meetings he had attended and individuals he had talked with concerning plots against the President and the [Republican National Convention]. Varela stated he had attended several meetings of the CISPES group and talked with El Salvadorans and read much of their literature from which he derived information regarding statements such as "we need to do away with him," "we will waste him," and "we need to get rid of him." Varela stated there was one meeting he attended that [sic] the CISPES group discussed throwing their bodies in front of the presidential limousine to stop the motorcade, then throwing red paint on the presidential limousine to signify the blood that had been shed in El Salvador. From these generalized statements and his general knowledge and personal background of living in El Salvador, Varela drew the conclusion there was going to be an assassination attempt on the President. Varela stated the word "assassination attempt" was derived from his own vocabulary. Varela could furnish no information that he had ever heard or seen anything to indicate there

> was or had ever been a specific threat of assassination or plot to do harm to the President.
>
> * * * * * * *
>
> The interviewing Agents concluded that Frank Varela does appear to have a sincere concern for and intense admiration for the United States. It does appear that he has taken specific facts derived from several sources and through a combination of his personal experiences with terrorists in El Salvador and his desire to furnish significant information to the FBI, has embellished and drawn personal conclusions which have distorted the original information. These Agents also indicated it is likely that this Service will be contacted by Varela in the future as a result of his exaggeration of possible danger posed by El Salvadorans and his apparent sincere desire to make a contribution in the effort to maintain security in the United States.

By mid-August Mr. Varelli had retained a lawyer, who called the Dallas field office and then sent a letter on August 21, 1984, indicating Mr. Varelli's desire "to terminate any further employment with the FBI" and "to quietly settle" his claims. Efforts to settle the matter continued until January of 1985. When these efforts failed, the FBI closed its Varělli asset file on January 11, 1985.

In 1985, despite the fact that he was pursuing claims against the FBI, Mr. Varelli made contact with the Dallas field office now and then to offer information. In late January, he "offered his services to the FBI again." In March and April of 1985, Mr. Varelli contacted the Dallas field office to allege that a person had extreme right-wing connections and was encouraging him to identify FBI agents. Later in April, he gave the FBI some information he had received from the local CISPES chapter and "expressed a desire to continue his former relationship with the Bureau." Mr. Varelli was told that the FBI could receive information from him, but "could not request/direct his activities while his claim against the FBI remained pending."

When Mr. Varelli gave the Dallas field office his allegations regarding the person who wanted him to identify FBI Agents, the Dallas office commented that "Dallas believes [Mr. Varelli] to be credible in these matters as they are too easily diproven or corroborated to be fabricated by him." In May of 1985, after the Houston field office reported that Mr. Varelli had contacted a Houston FBI Special Agent to complain about the way he had been treated by the FBI, the Dallas field office replied that "Dallas has no objection to Houston's utilization of [Mr. Varelli] and would highly encourage the relationship." The Houston office declined to pursue the matter.

III. 1986–1987 ALLEGATIONS AND INQUIRIES

In March of 1986, Mr. Varelli wrote to Senator Lloyd Bentsen of Texas, asking him "to see that justice prevails in my particular case." Enclosed with the letter were a 12-page statement and a three-page summary of Mr. Varelli's claims. Senator Bentsen referred the letter to the Department of Justice. Mr. Varelli also sent his statement and summary to an FBI Special Agent in the Houston field office, which sent them to FBI Headquarters. On April 6, 1986, *The Dallas Morning News* ran a long front-page story on Mr. Varelli's complaints. On August 20, 1986, Mr. Varelli filed a civil suit against several FBI Special Agents.

In an affidavit filed with the suit and in subsequent interviews with the media, Mr. Varelli made several accusations of illegal or improper FBI actions. These accusations led to a 1987 inquiry by the FBI's Office of Professional Responsibility (FBI/OPR). The FBI provided the following summary of Mr. Varelli's accusations and the results of the inquiry:

VARELLI'S ALLEGATIONS

In 1986, Varelli filed a Federal civil suit in Dallas, Texas, in an effort to recover the monies he claimed he was owed by the FBI. Named as defendants in the suit were several current FBI Agents, as well as former Special Agent Flanagan and the former Dallas SAC. . . . In an affidavit submitted in support of his civil suit, Varelli made several allegations that FBI Agents had committed illegal acts in connection with the CISPES investigation. Varelli's contacts with the news media in January, 1987, apparently were related to his efforts to recover money through his civil suit.

A review by OPR of Varelli's various interviews by the news media, as well as a review of the affidait filed in support of his civil suit, disclosed the following allegations of improper or illegal acts by FBI Agents:

—The FBI directed Varelli to "compromise leaders" of CISPES.
—Two FBI Agents broke into Bethany House and removed CISPES documents.
—At FBI direction, Varelli provided the National Guard of El Salvador; Varelli believes some of these people may have been killed.
—Varelli provided the FBI a list of El Salvadoran death warrants ("hit list") but the FBI never notified the people on the list.)
—At FBI direction, Varelli prepared a Terrorist file on Robert White and made dossiers on Reagan Administration opponents, including Senator Christopher J. Dodd, Senator Claiborne Pell, U.S. Representative Patricia Schroeder and former U.S. Representative Michael D. Barnes.
—Varelli was told by his FBI supervisors to "find guns" at CISPES.
—Varelli was told by his FBI supervisors that CISPES had Communist ties.
—FBI Agents told Varelli they "don't give a damn about the law."
—FBI Agents threatened Varelli; he was told if he ever talked about this or talked to reporters, he would be killed.
—FBI Special Agent Sal Escobedo told Varelli he trained "Contra" soldiers in El Salvador and Puerto Rico.

Following a review of Varelli's allegations, Michael E. Shaheen, Jr., Counsel, OPR Department of Justice (OPR/DOJ), advised that the OPR inquiry should be conducted as a criminal investigation, in view of the nature of the allegations. Subsequently, signed, sworn statements were obtained from relevant current and former employees, including several interviews of former Special Agent Flanagan. File reviews were conducted at FBIHQ the Dallas Division and other FBI Divisions. As part of the inquiry, every Dallas Terrorism and asset file was reviewed for relevant information. Indices checks were conducted in every FBI field office for pertinent names. Dallas general and Electronic Surveillance indices were hand searched by OPR investigators to locate any references pertinent to the inquiry.

VARELLI INTERVIEW

Attempts by the FBI to interview Varelli were unproductive. To date, Varelli has refused to be interviewed by the FBI, except under restrictions insisted upon by his former attorney and his current attorney, which preclude his interview.

RESULTS OF INVESTIGATION

Although an exhaustive, complete OPR investigation could not be completed without the interview of Varelli, certain facts were established.

Former Special Agent Flanagan admitted he made unauthorized disclosures of classified information to Varelli, improperly withheld payments from Varelli, and mismanaged Varelli as an asset. Apart from Special Agent Flanagan, all other FBI personnel involved furnished signed, sworn statements and denied any illegal or improper act, as alleged by Varelli.

The following allegations were not substantiated:

—The FBI directed Varelli to "compromise leaders" of CISPES.
—Two FBI Agents broke into Bethany House and removed CISPES documents.

—The FBI directed Varelli to provide the National Guard of El Salvador with the names of people returning to El Salvador.

—Varelli was told by his FBI supervisors to "find guns" at CISPES.

—FBI Agents told Varelli they "don't give a damn about the law."

—FBI Agents threatened Varelli; he was told if he ever talked about this or talked to reporters, he would be killed.

—FBI Special Agent Sal Escobedo told Varelli he trained "Contra" soldiers in El Salvador and Puerto Rico.

The following allegations were determined to be unfounded:

—At FBI direction, Varelli prepared a terrorist file on Robert White and made dossiers on Reagan Administration opponents, including Senator Christopher J. Dodd, Senator Claiborne Pell, U.S. Representative Patricia Schroeder and Former U.S. Representative Michael D. Barnes.

A review of files at FBIHQ and the Dallas Field Division disclosed no terrorism files or TPA entries concerning Robert White, Senator Christopher J. Dodd, Senator Claiborne Pell, U.S. Representative Patricia Schroeder and former U.S. Representative Michael D. Barnes.

—Varelli provided the FBI a list of El Salvadoran death warrants ("hit list") but the FBI never notified the people on the list. (Former Ambassador Robert White was on the list.)

Varelli provided a list of El Salvadorans (six persons in the United States and 32 persons in Mexico or El Salvador) who were on a "hit list" for assassination by the Secret Anti-Communist Army (ESA) in El Salvador. Contrary to the allegation, FBIHQ provided this list to FBI offices in Dallas, Texas; Houston, Texas; Washington, D.C.; Mexico; and Panama with instructions to identify and warn potential victims and local police in the United States. Information copies were provided to other interested Federal agencies.

Although Robert E. White's name did not appear on this list, it was included by Varelli on a list of 403 names captioned, "El Salvador's Terrorism. List of It's Members," which was provided by Dallas Division to FBIHQ on 6/23/83. . . . Dallas advised Varelli compiled the list of active members of the FMLN in El Salvador who, according to Varelli, would pose a serious threat to the United States should they enter due to their potential to conduct terrorist acts within the United States. The Dallas airtel stated, "Source (Varelli) advised it is a current list, carefully compiled, over a six month period, and contains only individuals who have committed terrorist acts in El Salvador on behalf of the FMLN. Source has background on each individual." The information provided by Varelli identifed Robert E. White as an active member of FMLN involved in terrorist acts in El Salvador. Varelli did not identify White as the former U.S. Ambassador to El Salvador.

—Varelli was told by his FBI supervisors that CISPES had Communist ties.

Each FBI Agent who handled Varelli while he was an FBI asset denied this allegation. As early as 9/4/81, Varelli provided a handwritten report on "FDR-CISPES" which claimed CISPES was created to serve the Communist cause. Varelli's report states in part, "CISPES claim that it was formed to oppose U.S. intervention in El Salvador and to support the legitimate struggle of the Salvadorean (sic) people for self-determination. This is not true. It was created by the FDR-FMLN to start the 'Political Fronts'; 'The Community Bases'; 'The Parish Plan' and the indroctination (sic), and recruiting of new elements that could serve the Communist cause. CISPES claimed that it is not structurally linked to the FDR. This is true because the FDR and the FMLN are gather (sic) under the DRU, and this under the direction of the P.C.S. (Salvadorean [sic] Communist Party). But they failed to mention that as members of a international Communist party, they obey orders and follow instructions and help other groups. . . ."

The OPR inquiry disclosed no information indicating serious misconduct or criminal conduct on the part of any current FBI employee. The inquiry did disclose possible criminal misconduct on the part of former Special Agent Flanagan in connection with unauthorized disclosures of classified information to Varelli and withholding of asset payments. After Flanagan's resignation, the CID continued to conduct investigation of Flanagan's actions, but ultimately, by 3/13/87, both the United States Attorney, Dallas, Texas, and the Department of Justice, Washington, D.C., declined prosecution of Flanagan.

Interviews by OPR of SA [Special Agent], supervisory and management personnel assigned to the Dallas Division during the period Varelli was handled as an asset, both by Flanagan and others, failed to disclose any evidence that illegal burglaries or other criminal acts were committed as alleged.

On 2/20/87, Varelli testified before U.S. Representative Don Edwards' Subcommittee on Civil and Constitutional Rights concerning the above described allegations. Varelli subsequently made additional appearances before the Subcommittee, as did former FBI Director Webster and other FBI officials including Executive Assistant Director (EAD) Oliver B. Revell, Former Director Webster advised the Subcommittee that a report of OPR's findings would be made to the Subcommittee at the completion of the investigation.

On 8/6/87, Deputy Assistant Director Bob A. Ricks, CID, provided Congressman Edwards' Subcommittee with an oral report concerning the results of the OPR Investigation, as well as the results of other FBI investigations of interest to the Subcommittee.

In an effort to ensure that the FBI was in possession of full details concerning Varelli's allegations, attempts were made to interview him. Correspondence with Varelli's attorney proved unsuccessful in obtaining an interview. Ultimately, Varelli's attorney, Mr. Douglas Larson of Dallas, Texas, failed to respond to correspondence.

OPR/DOJ was then requested to give consideration to utlizing a Federal Grand Jury (FGJ) in order to obtain Varelli's testimony regarding his allegations. Michael E. Shaheen, Jr., Counsel, OPR/DOJ, has advised that it is his opinion that use of an FGJ is neither appropriate nor warranted based on the results of the OPR investigation and Mr. Varelli's refusal to submit to an interview.

In view of OPR/DOJ's decison not to utilize an FGJ, in the absence of Varelli's submission to interview by the FBI, logical investigation in this matter has been conducted and the investigation has been completed, except for interview of Varelli, the person who made the allegations.

On December 16, 1988, the FBI provided the following additional information on the amount of money the FBI paid to Varelli and the amount of money that was kept by former Special Agent Flanagan:

> We determined that Frank Varelli was paid $20,065.05 from March of 1981 until June of 1984. This figure differs from the $18,870,08 that was reported to you in April 1987 as Varelli compensation. The $18,870.08 figure was the result of an audit prior to the administrative inquiry. During the CISPES administrative inquiry a separate audit was conducted that verified payments in the amount of $18,870.08, but additional receipts were located indicating additional payments to Varelli, making the total amount paid $20,065.05. Former Special Agent Flanagan, who resigned from the FBI, is believed to have kept $1,300 due Varelli. Flanagan claimed that he had withheld $1,000 of Varelli's payments. As a result of the internal investigation by the FBI, Flanagan reimbursed the FBI $1,000 on May 17, 1984 and resigned the same day. Subsequently, prosecution was declined by the United States Attorney in Dallas on October 1, 1984 and by the Office of Professional Responsibility at the Department of Justice on a later date.

The Senate Select Committee on Intelligence found no evidence that would cause it to question the results of the FBI/OPR inquiry. Neither the Committee nor the FBI knows, however, what information Mr. Varelli may have provided to the Salvadoran National Guard. It is quite possible, moreover, that FBI Special Agents' actions or statements may have led Mr. Varelli to believe, sincerely but incorrectly, that the FBI had engaged in certain illegal or improper activities.

PART THREE—SPIN-OFF INVESTIGATIONS AND REFERENCES TO OTHER GROUPS

The release of FBI documents on CISPES under the Freedom of Information Act (FOIA) led to widespread press reports in early 1988 that the FBI had collected information about a large number of domestic political, religious, academic, labor, and other groups during the CISPES investigation. The Committee has attempted to assess the nature and extent of FBI activity directed at such groups in connection with the CISPES investigation. This has been done in two ways.

First, the FBI Inspection Division identified nine separate "spin-off" investigations of groups that were opened as a result of the CISPES investigation. These were among the 178 spin-off investigations of groups and individuals summarized in an appendix to the Inspection Division Report.

Second, in response to a separate Committee request, the FBI Inspection Division reviewed FBI Headquarters and field office files on the CISPES investigation to determine FBI activity reflected therein with respect to some 200 groups whose names were reportedly mentioned in the CISPES files, including those identified to the documents released to the public under the FOIA as well as other groups who had been identified to the Committee as possibly being subjects of investigation. The results of this review were summarized in a second appendix to the Inspection Division Report. Both appendices were made available to the Committee.

The following analysis examines the 178 spin-off investigations (including the nine group investigations) referred to above, plus eleven additional cases from the list of 200 groups where the FBI appears to have actively investigated groups mentioned in the CISPES files. This can only be considered a representative sampling, however, inasmuch as the list of 200 groups submitted by the Committee represents a small fraction of the number of groups the FBI Inspection Division found to be mentioned in the CISPES files. Those files contained retrievable information on an estimated 2,375 individuals and 1,330 groups, as explained further in Part Four.

I. SPIN-OFF INVESTIGATION IDENTIFIED BY THE FBI INSPECTION DIVISION

A. INDIVIDUAL INVESTIGATIONS

Most of the 169 spin-off investigations of individuals were based solely on association with, participation in, or leadership of particular local CISPES chapters. The predicate for those spin-off investigations were derived entirely from the predicate for the overall CISPES investigation (based on the Frank Varelli allegations) and from FBI Headquarters or Dallas field office instructions advising field offices to open individual investigations at their discretion. In many cases, the Dallas office or another field office obtained long distance telephone records of the local CISPES chapter and sent to other offices the phone numbers called in their territory. The recipient offices were given the discretion to open investigations on the persons whose numbers had been called. No guidance was provided, so the office pursuing the lead had to make its own assessment of whether the person identified as recipient of the call should be investigated or not. There was no consistent pattern. Some offices opened a number of investigations on individuals based on long distance toll call record leads, while other offices merely identified the persons called and reported minimal identifying data back to Dallas or the requesting office. In a few cases similar leads from financial records and from correspondence obtained through trash checks provided the basis for opening spin-off investigations.

As discussed later with respect to violations of investigative policies and procedures, the FBI Director found that a few of the spin-off investigations were unjustified. The Director also concluded that the CISPES investigation was unnecessarily broadened to include "rank and file members."[20] As a result of this overbreadth, the justification was weak for many other spin-off investigations, especially those based on long distance toll call and trash cover leads. They were also an inefficient use of FBI resources.

Some spin-off investigations began as a result of CISPES publications listing individuals as local chapter leaders or as representing local chapters at national CISPES conferences. One case illustrates the problems with such investigations. Based on information in CISPES publications, the Dallas field office advised the Oklahoma City field office that an individual was a leader of CISPES in Oklahoma. The Oklahoma City office thereupon conducted a 15-month investigation using a wide range of investigative techniques, resulting in the conclusion that the individual was, indeed, a leader of CISPES in Oklahoma. There was no indication from beginning to end that the individual or the Oklahoma CISPES group had any connection with terrorism in the United States or abroad or any other illegal activity. Given the broad instructions from FBI Headquarters governing the CISPES investigation, the FBI did not consider the spin-off investigation of the individual to be a violation of applicable investigative policies or procedures. Once FBI Headquarters had determined that the predicate existed for a nationwide international terrorism investigation of every local CISPES chapter, field offices were permitted to open separate international terrorism investigations of the leaders of every chapter regardless of whether or not there was any other information or allegation connecting the individual leader or chapter with terrorism.

In a small portion of the spin-off cases, the FBI may have had sufficient information to justify an investigation apart from the national-level CISPES predicate based on Frank Varelli's allegations. This appears to have been the case with some of the spin-off investigations that continued for a substantial period of time after the CISPES group investigation was closed in June, 1985. Fourteen individual CISPES spin-off investigations remained open at least six months after the CISPES investigation was closed, and the last individual CISPES spin-off investigation was closed in March, 1988. Some of these cases were subject to periodic review by the Justice Department Office of Intelligence Policy and Review. Although the Committee did not review all the files on spin-off investigations, summaries prepared by the Inspection Division were examined and files were sampled to verify the accuracy of the summaries. Based on these summaries, it appears that the FBI may have had a reasonable basis to conduct several spin-off investigations and to continue them after the CISPES cases was terminated.

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[20] SSCI Hearings, September 14, 1988, p.122.

B. SPIN-OFF GROUP INVESTIGATIONS

The nine "spin-off" group investigations fell into four different categories.

1. CISPES look-alike.—One group appeared to be substantially identical to a CISPES chapter, but with a different name. Several FBI field offices investigated such groups under the general authority for the CISPES investigation, but in one case a separate investigation was opened. FBI Headquarters instructed the Pittsburgh field office to treat the local Central American Mobilization Committee as a CISPES chapter. The group was investigated for ten months with many of the techniques used in CISPES chapter investigations elsewhere.

2. Limited purpose inquiries.—Three cases involved very limited investigations for specific purposes.

One field office opened an investigation of a private firm for six months to determine the owner's potential as an FBI source, based on a contact between a local CISPES leader and the owner. While technically a group investigation, the FBI's sole interest was in the owner (who was never identified).

Another field office conducted a two-week investigation of the local Pledge of Resistance, based on a source report that it was co-sponsoring with CISPES and other groups a demonstration at a military base that would include acts of civil disobedience. Techniques were limited to checks of existing FBI file indices and liaison with the military base and local law enforcement officers.

One field office opened a case for six months on a religious task force on Central America to identify its leaders and their involvement with CISPES, but only conducted checks of existing FBI file indices.

3. Non-CISPES predicate.—In two other cases the investigation was opened on the basis of classified information linking the groups with subjects of non-CISPES investigations.

One field office conducted a ten-month investigation of a Spanish-language group which occupied the same building as CISPES.

The Phoenix, Arizona, field office initially investigated the Tucson Committee for Human Rights in Latin America for three months. The investigation was closed after an interview with the group leader who set forth the group's objectives. FBI Headquarters instructions to reopen the case for another three months made it overlap the next category.

4. Cases raising issues.—In three cases, plus the reopening of the Tucson Committee case, the investigations raise policy issues because they appear to have been based solely on ideological similarity or association with CISPES.

The Tucson Committee case was reopened because the philosophy of the group appeared identical to CISPES and FBI Headquarters wanted the Phoenix field office to re-contact specific FBI offices for terrorist information on the group. No such information was received.

The Cleveland, Ohio, field office conducted two of the remaining three investigations. A ten-month investigation of the local Central American Solidarity Committee was based on information indicating the group was sympathetic to CISPES. There is a question whether it was proper to continue the investigation of the Solidarity Committee after the local CISPES case was closed. The second Cleveland case was the investigation of the Emergency National Conference Against U.S. Military Intervention in Central America. The purpose was to determine the extent of CISPES affiliation with the conference and to identify any potential terrorist activity. The Inspection Division did not report any predicate other than information indicating the conference was to take place.

A four-month investigation by another field office of a group concerned with assistance to Latin America was based on source information indicating the group's association and cooperation with CISPES.

These last four cases raise a significant policy question: how widely may the FBI investigate groups that associate or sympathize with subjects of international terrorism investigations? This issue is discussed further in Part Four.

II. THE LIST OF 200 GROUPS SUBMITTED BY THE COMMITTEE

Based on the summaries attached to the Inspection Division report, it appears that the FBI actively investigated sixteen of the 200 groups on the list submitted by the Committee which were mentioned in the FBI CISPES documents released under FOIA and listed in congressional questions to the FBI. Four of the sixteen groups were subjects of spin-off investigations discussed above (Cleveland Central American Solidarity Committee, Emergency National Conference Against U.S. Intervention in Central America, Pledge of Resistance, and Tucson Committee for Human Rights in Latin America). One of these four cases (Pledge of Resistance) is discussed below, because the spin-off investigation reflected only part of the FBI activity reported in the CISPES files.

A. GROUPS NOT ACTIVELY INVESTIGATED

It is important to stress that the vast majority of groups mentioned in the CISPES documents that have been released under the Freedom of Information Act were not the subject of any other type of inquiry as a result of the CISPES investigation. The Inspection Division found no references at all in FBI CISPES-related files to 18 of the 200 groups. In the remaining cases, information about the groups was collected incidentally to the CISPES investigation, with little active investigation directed at those groups beyond occasional checks of existing FBI file indices, local law enforcement records, and telephone subscriber records. FBI sources and surveillance directed at CISPES activities often produced reports and documents on activities undertaken jointly by CISPES and these other groups.

Certain limitations in the Inspection Division report should be noted. The appendix did not purport to summarize all FBI investigative activity with respect to the 200 groups.

Rather, it summarized only that activity recorded in the files on CISPES and the CISPES spin-off investigations. Thus, if the FBI conducted an unrelated criminal or counterintelligence investigation of one of the 200 groups, that investigation may not have been mentioned in the CISPES files and thus would not have been included in Attachment 2. The Inspection Division explained these constraints to Committee staff prior to the completion of the inspection report, and Committee staff recognized that a comprehensive review of FBI activity would have required substantially more time and resources and might have gone beyond the scope of the Committee's investigation.

B. GROUPS ACTIVELY INVESTIGATED

As stated above, sixteen of the groups from the list of 200 submitted by the Committee were actively investigated. Three of these were also included in the cases identified by the FBI as "spin-off" cases from the CISPES investigation which were discussed above. The remaining thirteen involved cases undertaken as part of, or motivated by, the investigation of CISPES, or were based upon information not directly related to CISPES.

1. CISPES chapter.—One CISPES chapter is on the list of 200—the Norfolk field office investigated the Old Dominion University (ODU) chapter of CISPES under the general authority of the CISPES investigation, without opening a separate investigation. FBI Headquarters authorized the Norfolk office to investigate the ODU chapter after the initial 3/28/83 instructions opening the investigation in 12 other offices, but prior to the FBI Headquarters instructions of 10/23/83 to all FBI field offices to investigate every chapter. In addition to the national CISPES predicate based on Frank Varelli's allegations, the Norfolk office learned prior to opening the investigation that the ODU CISPES chapter had held a public meeting addressed by a Salvadoran leftist labor leader who was alleged to be engaged in fund-raising for Salvadoran FMLN/FDR causes.

2. CISPES look-alikes.—Three groups were investigated because they appeared to be identical to CISPES chapters, with different names—the Central American Coalition in Minneapolis, the Central American Solidarity Coalition in Milwaukee, and the Central American Solidarity Committee in Baltimore. All three investigations were opened as a result of the 10/23/83 FBI Headquarters instructions to investigate every CISPES chapter. Thus, these cases are typical of as many as 180 local CISPES chapters that Director Sessions testified were covered by the 10/23/83 instructions.

The Baltimore investigation raises a separate issue. According to the Inspection Report, the Baltimore field office submitted an initial report to FBI Headquarters on the local group's lawful political activities and requested guidance. FBI Headquarters replied on 11/15/85 that the group "appears to be under the umbrella of

CISPES" and that the Baltimore office "should conduct the necessary investigation to identify members of CASC and determine if they are engaged in terrorist acts or supportive of terrorism inside the United States. If Baltimore should determine that CASC is not engaged or is not in support of terrorism, the case should be immediately discontinued." The propriety of the FBI Headquarters instruction to continue the investigation until the absence of support for terrorism could be established—in other words, until a negative could be proved—is questionable.

3. Separate predicates.—Five groups were the subjects of separate FBI classified investigations based on information not directly related to CISPES.

In one case the group shared an office with a CISPES chapter, and FBI Headquarters approved non-intrusive closed circuit TV (CCTV) coverage of the office entrance in the investigation of the non-CISPES group. The CCTV coverage provided information on both CISPES and the other group. In addition, many of the informants reporting on CISPES also reported on this group.

A separate investigation of the group was never reported to, or approved by, the Justice Department. The Inspection Division did not consider whether the investigation of this group which had been undertaken under the authority of the investigation of a third group (not CISPES), may have violated applicable policies. The case appears similar to the Dallas field office's use of Frank Varelli to infiltrate the Dallas CISPES chapter in 1981 under the authority to investigate a separate Salvadoran group. Both cases raise issues that should be clarified in any revision of applicable policies.

References to a second group consisted of information taken from fliers and other public documents which showed some connection between the group and CISPES. The group was investigated on the basis of information unrelated to CISPES indicating that sites in the United States were being used for recruitment of Salvadoran militants and training to fight for the guerrillas in El Salvador.

References to a third group in CISPES files came from publications and informant reports on CISPES-related activities, as well as indices and subscriber checks aising from the CISPES investigation. According to the Inspection Division summary, the group was the subject of a separate classified investigation.

CISPES files contain references to the fourth group from source reports and publicly available documents on CISPES activities co-sponsored, supported, or endorsed by the group. The only investigation of the fourth group noted in CISPES files is indices checks and surveillance of a forum co-sponsored with CISPES. The inspection report said the group was the subject of a separate classified investigation.

The investigation of the fifth group was described in testimony by Justice Department attorneys as a CISPES spin-off investigation that was closed after Office of Intelligence Policy and Review found insufficient predicate. The FBI Inspection Division did not consider this case to be a CISPES spin-off. Committee staff examined the FBI files on this investigation and found it to have a predicate largely separate from CISPES, with some indications of links to terrorist training. The group was listed in a CISPES leader's address book and Rolodex file, which an FBI source copied and gave to the FBI. Another FBI CISPES source included this group in a report on 40 solidarity groups.

4. Other issues.—In four other cases involving groups on the list of 200 groups submitted by the Committee, FBI investigative activity raised additional issues. While the Inspection Division summaries did not provide sufficient details to resolve these issues, they should be taken into account in revising applicable policies and implementing other remedial measures.

The Birmingham, Alabama, field office opened its case on the Birmingham Committee in Solidarity with Central America as a domestic security/terrorism investigation and after three months consolidated it into the general CISPES investigation. The Inspection Division did not explain the predicate for the domestic security/terrorism investigation, and none appears to have existed. The Birmingham file indicated that no connection was ever established between CISPES and the group. A request for FBI Headquarters authority to obtain the group's telephone toll records stated that the group was identical to CISPES. Relying on this statement, FBI Headquarters approved the request and the group's toll records were obtained. The Inspection Division did not find any policy requiring more particularized justification. (This deficiency has been remedied by enactment of the Electronic Communications Privacy Act of 1986, which establishes statutory standards and procedures for obtaining long-distance telephone records.)

The Salt Lake City, Utah, office opened a local CISPES investigation in response to the 10/28/83 FBI Headquarters instructions that all CISPES chapters be investigated. A known and reliable source advised that there was a chapter of the Central American Solidarity Coalition at the University of Utah. The source continued to provide information about the group's activities, and several subscriber and indices checks were conducted. This investigation was appropriate under FBI policies because the techniques did not rise to the level which would require separate authority. However, the Inspection Division did not determine whether the FBI solicited information from the source about the group. If so, it would raise a question of possible violation of applicable policies requiring the opening of a separate investigation.

Apart from the spin-off case on the Pledge of Resistance, discussed above, several FBI sources provided information and documents which made reference to the Pledge of Resistance movement. Sources reported planned demonstrations in and around Federal buildings by Pledge of Resistance members, and documents provided by these sources described a nationally coordinated plan for massive acts of civil disobedience in the event of a U.S. invasion of Central America. In some cases Pledge of Resistance members were also members of CISPES, and Pledge of Resistance appeared on many fliers which also announced CISPES-related activities. The Inspection Division did not determine whether the FBI solicited information from sources about the group. If so, it would raise a question of possible violation of policies requiring that a separate investigation be opened. If not, the FBI's receipt of information about demonstrations at federal buildings that is volunteered (for example, by local law enforcement agencies) is permitted by applicable policies; and the FBI may disseminate such information to other agencies for public safety purposes.

The Spring Mobilization for Peace, Jobs, and Justice was the subject of reports from sources of three FBI field offices, who provided information on planned demonstrations and rallies in several cities during April, 1985. The demonstrations were organized by a broad array of groups. In addition, one office reported a protest at a military base by persons who identified themselves as the April Mobilization and gave an address. The FBI determined this to be the same as a CISPES chapter's address. Apart from the check on military base protesters, this case raised the same issues as the Pledge of Resistance case. The Inspection Division did not determine whether the FBI asked sources for the information, and FBI policies permit the passive receipt of information about demonstrations and FBI dissemination for public safety purposes. The issues raised by the policy are discussed in Part Four.

PART FOUR—ANALYSIS AND FINDINGS

I. PREDICATE AND SCOPE

In 1976, Attorney General Edward H. Levi issued the first Attorney General's guidelines for FBI domestic security investigations and for FBI foreign intelligence collection and foreign counterintelligence investigations (including international terrorism). Since then, succeeding Attorneys General have issued additional guidelines for regular criminal investigations and organized crime investigations. While the initial guidelines have been revised slightly, they all share a common feature: the FBI must have a factual basis for opening any inquiry or investigation. The guidelines specify the various types of information or allegations that the FBI must receive before it begins investigating a possible crime or gathering intelligence for counterterrorism, counterintelligence or organized crime control purposes. That factual basis is referred to as the "predicate" for the investigation. In counterintelligence and counterterrorism intelligence cases, the guidelines also provide for periodic review of the predicate by the Justice Department's Office of Intelligence Policy and Review.

The first question, therefore, is whether there was an adequate predicate for the two investigations of CISPES—the Foreign Agents Registration Act (FARA) investigation in 1981 and the international terrorism investigation in 1983-85—and for Frank Varelli's initial infiltration of the Dallas CISPES chapter in 1981 as part of another FBI investigation.

Closely related to the predicate question is the issue of the scope of the investigation. In regular criminal investigations, the scope is normally determined by the leads produced by the commission of a specific crime or by an alleged plan to commit a specific crime. Counterintelligence, counterterrorism intelligence, and organized crime intelligence investigations may differ from this model when they seek to collect information on an organization or criminal "enterprise." The Attorney General's guidelines do not fully address the issues of scope that may arise in such cases. Nevertheless, it is important to determine whether the CISPES investigation swept more broadly than was appropriate.

A. PENETRATION OF THE DALLAS CISPES CHAPTER IN 1981–82

On July 17, 1981, FBI Headquarters approved the use of Frank Varelli by the Dallas field office to penetrate the Dallas CISPES chapter. According to the FBI inspection report, FBI Headquarters instructed that Mr. Varelli's "efforts at penetration should be solely directed to" a Salvadoran guerrilla group under separate FBI investigation or its political arm "or CISPES which is a part of the [guerrilla group]." The FBI has advised the Committee, however, that the assumption that CISPES was a part of the guerrilla group was not supported anywhere in the relevant FBI files.

The Dallas field office's authority to penetrate CISPES predated the opening of the FARA investigation by two months, and Mr. Varelli actually began attending and reporting on CISPES meetings before any investigation of CISPES was authorized. Moreover, after the investigation of the guerrilla organization was closed in September, 1981, and indeed after the FARA investigation effectively ended in December, 1981, the Dallas field office continued to use Mr. Varelli to collect information on CISPES until February 1982. The FBI Inspection Division Report did not discuss the possibility that the Dallas field office's use of Mr. Varelli to penetrate CISPES in this period violated applicable guidelines or procedures. It is clear, however, that the FBI lacked the factual basis that should be required before such intrusive investigative activity is undertaken.

It should also be noted that Mr. Varelli's infiltration of the Dallas CISPES chapter was not directly connected with the FARA investigation of CISPES. Although FBI Headquarters included the Dallas office within the scope of the FARA investigation, the only response from the Dallas office was a brief report on CISPES publications acquired by Mr. Varelli. Mr. Varelli's other reports in this period were either disseminated to different Headquarters files or kept solely at the Dallas field office.

B. PREDICATE AND SCOPE OF FOREIGN AGENTS REGISTRATION ACT INVESTIGATION

The FBI investigation of CISPES under the Foreign Agents Registration Act in 1981 was confined to five field offices and closed after three months. It was opened at the specific request of the Criminal Division of the Department of Justice based upon a document provided by the Department of State. FBI inspectors determined that this investigation was properly conducted, and the Committee has found nothing to indicate any departure from established policies and procedures.

Director Sessions testified that the FBI opens such FARA investigations whenever requested to do so by the Criminal Division of the Justice Department.[21] Thus, the FBI takes the position that it will investigate regardless of whether the information on which the investigation is based has been verified. The document that provided the basis for the FARA investigation of CISPES—the so-called Farid Handal trip report—was never verified by the FBI. Moreover, the document did not, on its face, show foreign direction or control of CISPES. A foreign revolutionary movement was alleged to be seeking support for its cause from groups in the United States, including leaders of the U.S. Communist Party and noncommunist political and religious groups. Beyond this, there was no specific indication that when CISPES was formed to champion the Salvadoran revolution, it was acting under the direction or control of a foreign power The investigation was ultimately closed because the FBI found that CISPES was not in violation of the Foreign Agents Registration Act. The FBI summarized its report as follows: "In summary, our investigation has shown that CISPES does give verbal support and encouragement to the FDR, and aligns its political views with those of the FDR. While we have received indications that the money collected by CISPES may be finding its way to the FDR, we have no real substantiated information linking CISPES financially to the FPL/FDR, or proof that CISPES is acting on behalf or at the direction of the FPL/FDR or any other foreign principle [sic]."

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[21] SSCI Hearings, September 14, 1988, p. 131.

The FBI Intelligence Division supervised this investigation pursuant to the Attorney General's classified guidelines for FBI foreign counterintelligence investigations. The Justice Department's Counsel for Intelligence Policy has advised the FBI that the case could also have been handled as a regular criminal case under the separate, unclassified Attorney General's guidelines for regular criminal investigations. The Committee shares this view. The Committee did not examine the practices of the Criminal Division of the Justice Department for requesting FBI investigations of domestic political groups to ascertain whether a group should be required to register with the Attorney General under the Foreign Agents Registration Act. FBI files do not explain why the Justice Department requested an FBI investigation on the basis of an unverified document received from the State Department that did not on its face show direction and control by a foreign power. The limited scope and duration of the FBI investigation and its focus on evidence of law violation suggest, however, that this inquiry did not intrude unduly into the exercise of First Amendment rights.

C. PREDICATE FOR THE CISPES INTERNATIONAL TERRORISM INVESTIGATION

From March, 1983, until June, 1985, the FBI conducted an international terrorism investigation of CISPES on the basis of allegations that should not have been considered credible, broadened the investigation beyond the scope justified even by those allegations, and continued the investigation after the available information had clearly fallen below the standards required by the applicable guidelines. The FBI closed the investigation shortly after an attorney in the Justice Department's Office of Intelligence Policy and Review determined that the information submitted for review by the FBI did not meet the requirements for international terrorism investigations under the Attorney General's classified foreign counterintelligence guidelines.

1. Validity of the predicate.—Director Sessions testified, "Absent the information provided by Frank Varelli, there would not have been sufficient predication for an international terrorism investigation of CISPES. The case pivoted on the information Varelli provided, and there were clear deficiencies, both operational and supervisory, in the way in which Varelli was handled. His background and relability were never investigated adequately, and during much of the investigation the accuracy of Varelli's information was not adequately verified. His activities were inadequately supervised. By the time it was realized that Varelli's information was unreliable, the investigation had been under way for approximately one year.

The investigation would not have developed as it did had Varelli's reliability been properly scrutinized at the outset." [22]

FBI inspectors found that Mr. Varelli's unverified information as reported by the Dallas field office to FBI Headquarters indicated that CISPES as an organization operated at the direction of a terrorist group, was providing material support for terrorists, and was possibly providing aid and support for future terrorist acts in the United States. The FBI Director determined that this was sufficient to meet the requirements of applicable policies and guidelines but that, absent Mr. Varelli's allegations, the predicate was inadequate.[23] FBI files indicate that there may have been sufficient information to open investigations of some individual CISPES members who were identified as linked to terrorist activities.

The Committee's findings generally coincide with those of the FBI Director. Apart from Mr. Varelli's allegations, there was other classified information indicating that specific individuals associated with CISPES were engaged in activities that would justify investigation under the Attorney General's guidelines. Those activities would not, however, have justified an investigation of CISPES as an organization. There was reason to believe that a few individuals were acting at the direction of the Salvadoran FMLN and were knowingly providing financial support for its guerrilla war in El Salvador. That information was never confirmed, but was sufficiently credible to justify further investigation.[24] There were also a few specific allegations that particular individuals associated with CISPES in various parts of the country were discussing plans for acts of violence to protest US policy in Central America; and there would later be circumstantial evidence suggesting possible local CISPES links to several bombings in Washington, D.C., as well as to a threat in Los Angeles against the Salvadoran TACA Airlines. No CISPES connections to terrorist violence were ever established, but investigations focusing on those specific facts and circumstances would have been justifiable without requiring an international terrorism investigation of the organization itself.

If Mr. Varelli's information had been reliable, the predicate for initiation of an international terrorism investigation of additional elements of the CISPES organization would have been valid. However, as Director Sessions testified, after the investigation had been under way for approximately one year, "it was realized that Varelli's information was unreliable." [25] At that point, in mid-1984, the international terrorism investigation of CISPES should have been terminated. While the Dallas field office continued to consider using Mr. Varelli, the FBI Headquarters supervisor doubted his further usefulness. These doubts should have triggered a thorough reconsideration of the predicate for the CISPES investigation. During the first year of the investigation the FBI had uncovered additional information about foreign contacts of specific CISPES members, but nothing to confirm that the organization itself was under foreign control or was secretly funding guerrilla warfare in

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[22] Ibid., p. 121.

[23] Ibid. See also SSCI Hearings, hearing of April 13, 1988, p. 100.

[24] See HPSCI Hearing, September 29, 1988, pp. 20–21.

[25] SSCI Hearings, September 14, 1988, p. 121.

El Salvador. The suspicions of CISPES responsibility for the Washington, D.C., bombings had been definitely ruled out, and other information about threats of domestic violence was fragmentary and localized. The FBI Director found that without Mr. Varelli's information, there was not sufficient predicate to continue the CISPES international terrorism investigation for a second year. The FBI's continued reliance on Mr. Varelli's information after his credibility was called into question compounded the initial mistake and extended the CISPES investigation into a second year.[26] The FBI's failure to evaluate properly Mr. Varelli's reliability as a source is discussed further in the section on management and supervision.

By 1985, Mr. Varelli's information was no longer being used as part of the predicate for the CISPES investigation. As the Justice Department review unit determined in June of 1985, what remained was information about lawful political activities protected by the First Amendment. Nevertheless, the FBI was prepared to go forward with the investigation for a third year until the Justice Department's review triggered reconsideration of the case. The Committee agrees with the FBI Director, who found this to indicate failure by FBI Headquarters to perform its oversight responsibility with respect to guideline compliance.

Opening the CISPES international terrorism investigation based upon Mr. Varelli's information produced an investigation without a properly validated predicate. Continuing that investigation beyond mid-1984 despite evidence of Mr. Varelli's unreliability magnified the error. And maintaining the investigation into a third year had even less justification.

2. FBI investigative authority.—In assessing the predicate for the CISPES international terrorism investigation, the Committee has examined the basis for FBI authority and the FBI policies that applied to the case. Some have questioned whether the FBI may properly investigate an individual or group in the absence of evidence of a specific federal criminal violation. It is important to understand that the FBI does have such authority in the international terrorism field. Within the framework of applicable statutes, Executive orders and guidelines, the exercise of that authority in particular cases is a matter largely of FBI counterterrorism intelligence and law enforcement policy. The Committee's findings with respect to the CISPES investigation are not intended to undermine the FBI's ability to conduct legitimate counterterrorism intelligence investigations promptly and thoroughly.

a. International terrorism investigations.—The terrorist group with which CISPES was allegedly involved was the Salvadoran-based revolutionary guerrilla movement known most frequently as the FMLN. The FMLN used political violence as part of its guerrilla war against the government of El Salvador. At the time of the initiation of the CISPES investigation in March, 1983, the FMLN was not suspected of committing terrorist acts in the United States or against U.S. citizens abroad. (It later took credit for the killing of a U.S. military attache in San Salvador, Navy Lieutenant Commander Albert A. Schaufelberger.)

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[26] See HPSCI Hearing, September 29, 1988, p. 18.

Even without evidence of terrorism in the United States or against U.S. targets, the FBI has the authority to investigate foreign guerrilla movements such as the FMLN and persons in the United States who knowingly assist their terrorist activities. Congress recognized this authority in the foreign intelligence Surveillance Act of 1978, which established statutory standards and procedures for electronic surveillance in FBI foreign counterintelligence and international terrorism investigations. The Act defines "international terrorism" to mean activities that:

> (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State or that would be a criminal violation if committed within the jurisdiction of the United States or any State;
>
> (2) appear to be intended—
>
> (A) to intimidate or coerce a civilian population;
>
> (B) to influence the policy of a government by intimidation or coercion; or
>
> (C) to affect the conduct of a government by assassination or kidnaping; and
>
> (3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are carried out, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.[27]

Under this definition, a group such as the FMLN is engaged in "international terrorism" if its violent guerrilla warfare operations in a foreign country would be criminal if conducted within the United States and if they have as their aim to intimidate or coerce a population or government in that country. An example of a similar situation is Provisional IRA (Irish Republican Army) violence in Great Britain and Northern Ireland.

The Foreign Intelligence Surveillance Act (FISA) authorizes FBI electronic surveillance of a U.S. person (e.g., a U.S. citizen, permanent resident alien, or domestic group) based on a court determination that there is probable cause to believe that the target is a "foreign power" or an "agent of a foreign power." With respect to international terrorism, the term "foreign power" is defined to include "a group engaged in international terrorism or activities in preparation therefor;" and the term "agent of a foreign power" is defined to include any person who "knowingly engages in . . . international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power" or "knowingly aids or abets any person in the conduct of [such activities] or knowingly conspires with any person to engage in [such activities.]"[28] The Act also provides that "no U.S. person may be considered a foreign power or an agent of a foreign power solely on the basis of activities protected by the first amendment to the Constitution of the United States."[29]

The Attorney General's guidelines for FBI foreign counterintelligence and international terrorism investigations use the statutory

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[27] 50 USC 1801(c).

[28] 50 USC 1801(a)-(b).

[29] 50 USC 1805(a)(3)(A).

FISA definitions of the terms "international terrorism," "foreign power," and "agent of a foreign power." While the precise standards for FBI international terrorism investigations are classified, these FISA terms reflect the general nature of FBI jurisdiction in this field. The Attorney General's guidelines do not include a provision comparable to the statutory restriction barring surveillance of a U.S. person "solely on the basis of activities protected by the first amendment," but the Counsel for Intelligence Policy in the Justice Department testified that such guidance is provided to the FBI as a matter of policy.[30]

Apart from electronic surveillance, general FBI authority to conduct foreign counterintelligence and international terrorism investigations is based primarily on Executive Order 12333, issued in 1981, which retained the basic features of previous Executive orders issued in 1976 and 1978. The Executive Order requires that such FBI investigations be conducted in accordance with guidelines issued by the Attorney General. Attorney General William French Smith issued revised classified guidelines for foreign counterintelligence and international terrorism investigations in April, 1983, shortly after the CISPES investigation was initiated. The Committee held closed oversight hearings on those revised classified guidelines later in 1983.

There is no indication that the new Executive order issued in 1981 or the revised FBI guidelines adopted in 1983 had any bearing on the initiation or conduct of the CISPES international terrorism investigation. None of the new provisions in the Executive order or revised guidelines was ever cited in FBI documents to justify the investigation or any techniques used in the investigation. The applicable classified standards and procedures were not materially changed from those in effect under the previous Administration.

b. Discretion in investigating Salvadoran political violence.—When the FBI initiated its international terrorism investigation of CISPES, political violence in El Salvador was a matter of serious concern to U.S. policymakers. Public attention focused on the activities of extreme right-wing "death squads" and what a Senate Select Committee on Intelligence report in 1984 desicribed as "the systematic political violence of the armed left." In discussing the results of an inquiry into allegations of links between U.S. officials and "death squads," the Committee report made clear it did "not mean to imply that rightwing political violence constitutes a greater moral or political issue than similar activities by the extreme left."[31]

Apart from Frank Varelli's allegations, FBI inspectors determined that the FBI had received other information by early 1983 indicating that the Salvadoran revolutionary leftist guerrilla movement was seeking to obtain financial support from sympathetic U.S. groups, to encourage those groups to oppose the U.S. policy of support for the Salvadoran Government, and to establish a cadre of individuals in the United States who could commit terrorist acts to draw attention to their cause. Committee examination of FBI files corroborated the FBI inspection findings. Mr. Varelli's allegations made it appear that CISPES fit into this picture, at least at the national level and in several parts of the country. Director Sessions testified that, if Mr. Varelli's reliability had been tested properly, and confirmed, the investigation as initially conceived would have been "a reasonable examination of a possible terrorist threat." The Director also testified that the FBI Headquarters decision to initiate the CISPES international terrorism investigation did "not reflect a policy of purposeful interference with legitimate domestic political activity." [32]

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[30] SSCI Hearings, April 13, 1988, pp. 90-91.

[31] Senate Select Committee on Intelligence, Recent Political Violence in El Salvador, Senate Report 98-659, pp. 1 and 9.

Some have questioned whether the FBI has investigated financial support or other assistance to foreign guerrilla movements selectively, however, on the basis of improper political or ideological considerations. In response, senior FBI officials have testified that they "have conducted several Neutrality Act investigations of persons affiliated with Contra groups seeking to overthrow the Sandinistas in Nicaragua." [33] The FBI has not conducted international terrorism investigations of Contra support groups under the classified foreign counterintelligence guidelines, but has conducted some major criminal investigations of right-wing Central American political violence. The decision whether to proceed under the classified foreign counterintelligence guidelines or the unclassified guidelines for criminal investigations depends on the specific facts and circumstances of each case. For example, FBI investigations of support for right-wing Salvadoran "death squads" were conducted primarily as regular criminal investigations, but some inquires were made under the classified guidelines.

No single factor appears to determine which guidelines the FBI will use to investigate support to the terrorist activities of a foreign guerrilla movement. The FBI does not have a formal policy governing these decisions. A review of other groups subject to recent international terrorism investigations under the classified guidelines indicates that the FBI concentrates its attention on foreign groups that commit terrorist acts against U.S. targets or against foreign governments allied with or seeking assistance from the United States and that have members inside the United States who are in clandestine contact with group leaders abroad. There have been variations, however, such as international terrorism investigations that have led to prosecutions of members of anti-Castro Cuban groups based largely in the United States (e.g., Omega 7) that have committed terrorist acts against Cuban targets abroad.

The Committee does not believe the CISPES investigation reflected significant FBI political or ideological bias in the conduct of international terrorism investigations. But the Committee did find that the FBI has placed a conscious emphasis on terrorist groups that target U.S. nationals or foreign governments allied with the United States. Director Sessions testified that the question of support for FMLN terrorist activities in El Salvador was a legitimate subject for FBI investigation because of FMLN "activities against United States citizens." [34] In fact, the CISPES investigation started before the FMLN was suspected of terrorist acts against U.S. nationals. The FBI does not have a clearly articulated policy for opening international terrorism investigations where U.S. nationals have not been targeted. There was, however, a legitimate basis for the FBI to investigate material support for the use of violence by guerrillas seeking to overthrow the Salvadoran government. The question of the adequacy of FBI investigations of support for right-wing political violence abroad, such as the Salvadoran "death squads" or the Nicaraguan contras, is beyond the scope of this report.

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[32] SSCI Hearings, September 14, 1988, p. 123.

[33] Executive Assistant Director Oliver B. Revell, SSCI Hearings, February 23, 1989, p. 46.

[34] HPSCI Hearing, September 29, 1988, p. 19.

In the Committee's view, the FBI should not pick and choose among groups engaged in political violence solely on the basis of U.S. support for or opposition to their cause. The Foreign Intelligence Surveillance Act makes no such distinction. The United States requires counterterrorism intelligence on persons who knowingly give material support for the use of violence to achieve political objectives, regardless of their goals. Priorities should depend on nonpolitical factors such as the seriousness of the violence committed by the group and the extent and credibility of the evidence that persons in the United States are involved. (The FBI is not expected to investigate persons acting under the control of the U.S. Government pursuant to lawful authorization, including proper notification of the Congress.) Interagency coordination and continuing congressional oversight are required to ensure that the FBI has a proper basis for exercising its investigative discretion in this area.

D. SCOPE OF THE CISPES INTERNATIONAL TERRORISM INVESTIGATION

At the outset of the CISPES international terrorism investigation, during March-June, 1983, the FBI focused carefully on the elements of CISPES most pertinent to the predicate—the CISPES headquarters in Washington, the Dallas chapter, and a handful of other chapters. This was where the available information indicated CISPES members might be involved in or aware of alleged activities that justified an FBI investigation—FMLN direction and control, financial and other material assistance to FMLN terrorism in El Salvador, or preparation for acts of terrorism in the United States. The initial FBI Headquarters instructions directed field offices to limit their investigation to these aspects of CISPES activity and not to monitor lawful CISPES political activities. Director Sessions testified:

> The original focus and intent of the CISPES investigation were to determine the extent of monetary and other support by CISPES for terrorism movements and activities in El Salvador; to determine the likelihood of CISPES conducting terrorist activities in the United States; to identify those individuals who knowingly supported terrorist groups in El Salvador through efforts in the United States; and to determine the extent of any control over, or influence on CISPES by the FDR or the FMLN. This focus was proper, given the information available to the Bureau at the commencement of the investigation.[35]

Within several months, however, the focus began to broaden. The FMLN took credit for the killing of an American military officer in San Salvador, and persons claiming responsibility for a bombing in Washington, D.C., declared they were acting at least partly in "solidarity" with the Salvadoran leftist revolution. The Dallas office reported (again based on Frank Varelli) that the local CISPES chapter planned to participate in an anti-Klan march which might turn violent. In this atmosphere, the Headquarters Supervisor issued instructions that progressively widened the scope of the investigation.

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[35] SSCI Hearings, September 14, 1988, p. 121.

As discussed further below, the scope widened substantively to include surveillance and reporting of political activities and to encompass rank-and-file members as well as leaders, and geographically to become a nationwide investigation.

1. Reporting on demonstrations.—Beginning in mid-1983, FBI Headquarters went beyond the initial narrow focus of the investigation by instructing the field to collect and report information on CISPES protest demonstration activities. The FBI Director and other senior FBI officials received reports on these demonstrations, which were generally nonviolent and never involved acts of terrorism. The Headquarters Supervisor advised senior FBI officials that such demonstrations would be "covered" in the CISPES international terrorism investigation. FBI Headquarters subsequently received regular reporting on peaceful demonstrations and marches by CISPES, often in concert with a variety of other groups. As Director Sessions testified, "there were instances when activities essentially political in nature were surveilled."[36] While observation of lawful political activities may be necessary in some FBI investigations, the CISPES investigation raises questions regarding the extent of such reporting.

The FBI has summarized its surveillance of CISPES demonstrations as follows:

> Various communications appear in the files reporting on CISPES activities such as public demonstrations and rallies. Many of these communications do not clearly indicate the origin of the information. Information contained in many of these communications appears to have originated from surveillance activity by other law enforcement agencies. [Two examples cite information on demonstrations at a U.S. Navy facility provided by the Naval Investigative Service and a demonstration at a Federal Building reported by the Federal Protective Service.]
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> As a result of the number of demonstrations and rallies reported on by outside agencies, coupled with the overall volume of . . . the files, a precise number of FBI physical and/or photographic surveillances cannot be determined. . . . Limited surveillances took place on college campuses and in churches.

FBI physical surveillance of CISPES demonstrations was arguably conducted in accordance with established policies and procedures. The applicable Attorney General's guidelines do not address, however, the issue of reporting on nonviolent demonstrations by individuals or groups who are subjects of FBI international terrorism investigations. Nor do the guidelines fully consider the First Amendment implications. Individuals have the right to exercise their First Amendment rights by participating in lawful demonstrations and attending rallies. Under applicable policies, the photographing of those individuals by law enforcement agencies is not considered a violation of those rights or an unethical or improper investigative technique as long as the law enforcement agency has a legitimate investigative-related reason to be present.

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[36] Ibid., p. 125.

Because the CISPES investigation did not have a properly validated predicate, the Committee questions whether the FBI had a legitimate investigative-related reason to be present at most, if not all, CISPES demonstrations. A subjective belief in the validity of the predicate does not excuse the FBI. The failure to take due care in assessing the source's reliability resulted in excessive observation of lawful political activity. Only where the FBI had an indication that specific individuals, who were proper subjects of investigation, might be present at a demonstration did the FBI clearly have a legitimate reason to conduct such surveillance. Absent the Frank Varelli allegations, this may have been the case in limited circumstances, such as surveillance of a demonstration in Washington, D.C., where CISPES-affiliated bombing suspects were expected to be present.

Some current and former FBI officials believe that, once an international terrorism investigation has a proper predicate, the FBI may use such lawful means as physical surveillance to collect and report on the nonviolent political protest activities of the subject. They believe such surveillance is justified for intelligence purposes, even if the information does not bear directly on the alleged terrorist support activity that is the predicate for the investigation. As discussed later, Director Sessions has taken actions "to ensure that if these surveillances and activities do take place, they are fully justified." [37] Continuing congressional oversight is required to consider the policies developed by the FBI and the Justice Department, in light of the CISPES experience, for the surveillance and reporting of lawful political protest activities protected by the First Amendment.

2. Reporting on other political activities.—A separate issue is posed by the references to the Foreign Agents Registration Act during the CISPES international terrorism investigation. On several occasions, the Headquarters Supervisor responsible for the international terrorism investigation in 1983–84 sent instructions to the field on the need to collect information about CISPES political "propaganda" activities because such information was relevant to determining whether CISPES was acting as an unregistered agent of the Salvadoran FMLN. Another concern was that CISPES might be receiving direction from Nicaraguan government officials on ways to protest U.S. policy in Central America. Some field offices questioned whether they could pursue indications of possible foreign influence on CISPES consistent with Headquarters instructions discouraging collection of information about political activities protected by the First Amendment. Moreover, when FBI Headquarters requested a report from the Dallas office in 1984 on whether the CISPES international terrorism investigation had produced any evidence of possible FARA violation for submission to the Criminal Division of the Justice Department, the instructions and report focused on more substantial evidence of foreign control such as financial ties. The FBI does not appear to have received adequate guidance from the Criminal Division of the Justice Department on the extent to which FBI international terrorism investigations should collect information about peaceful political activities of domestic groups to determine the possibility of FARA violations.

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[37] Ibid.

The Select Committee on Intelligence does not have primary jurisdiction to oversee the enforcement of the Foreign Agents Registration Act by the FBI and the Criminal Division of the Justice Department. Although the FBI's FARA investigation of CISPES was consistent with established FBI policies and procedures, both the Justice Department's request for that investigation and the lack of Departmental guidance on FARA enforcement requirements in international terrorism investigations highlight the importance of oversight of FARA enforcement by the Judiciary Committee.

3. The use of long distance telephone toll records.—The CISPES investigation also expanded geographically in mid-1983 when the Dallas field office, with FBI Headquarters approval, obtained long distance telephone records of the local CISPES chapter and sent out leads to other offices to identify the parties to the calls. This increased the number of offices involved in the investigation from 11 to 24, and each of these offices was told it had discretion to begin investigations of the individuals identified from the call records. Other offices followed Dallas's example, with explicit FBI Headquarters encouragement, multiplying the number of CISPES chapters whose long distance phone records were examined and the number of leads sent to other offices.

This contributed to investigative activity that the FBI Director later found "could not reasonably have been expected to accomplish the goals of the investigation." [38] Field offices were randomly setting out voluminous numbers of leads to identify subscribers to telephone numbers. This was in response to the stated goals of FBI Headquarters to identify leaders of CISPES. However, there was no true definition of what a leader was and where they might be located.

The FBI's excessive use of long distance toll records evidenced in the CISPES case has been curbed by legislation enacted in 1986, after the CISPES investigation ended. The Electronic Communications Privacy Act established statutory standards for FBI access to such records in international terrorism and other counterintelligence investigations. Those standards require "specific and articulable facts giving reason to believe" that the person whose records are obtained is an "agent of a foreign power," as defined in the Foreign Intelligence Surveillance Act. The Senate Intelligence Committee receives regular reports on the implementation of this Act. Those reports and Committee oversight inquiries have established that the toll records authority has not been used for any investigation similar to the CISPES case.

4. Nationwide investigation.—The most substantial expansion occurred in October 1983 when the investigation became nationwide. Director Sessions testified:

> The major turning point in the investigation came in October, 1983, when the Terrorism Section of the Criminal Investigation Division at FBI Headquarters sent a Teletype seeking additional investigative support in the CISPES investigation

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[38] Ibid., p. 122.

from every field office in the FBI, thereby effectively making the scope of the investigation nationwide.[39]

Describing this as a "major problem" that made the CISPES investigation "unnecessarily broad," the Director went on to state:

> The broadening of the investigation in October, 1983, in essence directed all field offices to regard each CISPES chapter, wherever located, as a proper subject of investigation. Based on the documentation available to the FBI by October, 1983, there was no reason to believe that all CISPES members nationwide knew of or had any involvement in support of El Salvadoran or U.S. terrorists. Thus, there was no reason to expand the investigation so widely. The focus should have been on CISPES national headquarters. . . . The decision to broaden the investigation unnecessarily was made at a comparatively low level, and put simply, the supervisory personnel at FBI Headquarters who should have reviewed and analyzed this decision and appreciated its significance failed to do so.[40]

Assessing the actual effects of the nationwide CISPES investigation is more difficult. Some FBI field offices did little or nothing, either because there was no CISPES activity in their areas or because they did not make a sufficient effort to locate it. The review of FBI files by FBI inspectors and Committee staff found that some local CISPES chapters did not come under FBI scrutiny and others were subject merely to cursory examination. Other field offices devoted substantial attention to investigating local CISPES chapters that were sometimes indistinguishable from coalitions with numerous local groups similar concerns about U.S. foreign policy. The CISPES international terrorism investigation was open at FBI Headquarters for nearly 27 months, but FBI inspectors found that "in the vast majority of the FBI field offices, the case was open for a considerably shorter period of time and in some instances, only briefly." During the last months of the investigation, for example, FBI Headquarters communications on the case were circulated to only 11 field offices.

5. Files and retrievable names.—The CISPES investigation produced extensive files. Director Sessions testified that the nationwide expansion in October 1983 "caused information on rank-and-file members who had nothing to do with international terrorism to be included in FBI case files." [41] According to FBI inspectors, "FBIHQ and field office general indices disclosed that the FBI had 330 volumes of investigative files which were associated with the CISPES investigation." FBI inspectors identified a total of "24,285 unique names, consisting of 13,198 persons and 11,087 organizations," in these main CISPES case files.

The reference to a name in FBI files does not mean that the individual or group was investigated or that the FBI could readily use the information about the individual or group in the future (for example, in a background check). Such information becomes readily available only when the FBI cross-references the name in its general file indices. Of all the names of individuals and groups identified in the CISPES files, including duplications and multiple references, FBI inspectors found that approximately 18 percent of the individuals and 12 percent of the organizations were indexed for future reference. The remaining names could not readily be retrieved through FBI indices. Thus, it can be roughly estimated that the main CISPES investigation resulted in retrievable information added to FBI files about approximately 2,375 individuals and 1,330 groups. (This is not a precise estimate because FBI inspectors did not determine the percentage of unique names that were indexed.)

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[39] Ibid., p. 120.
[40] Ibid., pp. 121-122.
[41] Ibid., p. 122.

In addition to the main CISPES investigation, the FBI conducted some 178 separate CISPES spin-off investigations of individuals and groups. In these cases the initiating offices sent out leads that generated the opening of 141 additional files in auxiliary offices. In total, then, FBI inspectors found 319 spin-off files to supplement the 330 volumes of files on the main CISPES investigation. Some of the spin-off files had multiple volumes, while others contained only a few pages. Taken together, the main CISPES investigation and the CISPES spin-off investigations produced at least 650 volumes of files at FBI Headquarters and in FBI field offices across the country.

6. Investigative techniques.—FBI inspectors examined the extent to which various investigative techniques were used in the main CISPES investigation and in the spin-off investigations.

Electronic surveillance, as defined and regulated by the Foreign Intelligence Surveillance Act or by Title III of the Omnibus Crime Control and Safe Streets Act, was not used. Consensual telephone monitoring was used in one spin-off case, without approval at the level required by applicable policy. Non-telephone monitoring techniques were not used, but in one instance consensual non-telephone monitoring was approved, but not used.

Searches requiring a court order were not conducted or requested. In one instance the FBI disseminated material taken by a source without proper authorization, and in another instance information obtained from local authorities on a local search warrant resulted in the opening of an investigation in violation of applicable policies and procedures. FBI inspectors found no evidence that the FBI was involved in any burglaries or break-ins.

Physical surveillance was used extensively, as summarized in the FBI Inspection Division report:

> The FBI undertook both photographic and visual surveillances of rallies, demonstrations, etc., in its investigation of CISPES. This technique involved the taking of photographs during demonstrations, surveillance of rallies on college campuses, and attendance at a mass at a local university. The purpose of taking photographs during demonstrations was for use or future use in identifying CISPES leaders. Such identification could be effected by displaying photographs to [sources] familiar with the leaders. . . . [O]n a few occasions, the FBI also surveilled churches and church groups involved in the sanctuary movement. Twenty-two field offices were identified as having utilized the surveillance technique during the CISPES and CISPES spin-off investigations.

In addition to the main CISPES investigation, physical surveillance was conducted in 30 spin-off cases covering 13 of these 22 field offices.

Undercover operatives were used in five different offices. In four of the offices, the technique consisted of "limited temporary attendance" by FBI undercover agents at CISPES or CISPES-related meetings. In one office, the undercover agent attended several CISPES meetings and unsuccessfully attempted to gain a position to trace funds allegedly sent to the Salvadoran guerrillas.

Mail covers were not used, but in one instance a mail cover was requested and approved, but never implemented. In three limited instances, information about mail service was acquired in violation of applicable policies.

Human source "assets" and informants were used extensively during the CISPES investigation. Other sources apart from Frank Varelli reported on CISPES. According to FBI inspectors, "These other assets based their reports upon their membership in the organization and their travels to attend various CISPES conferences. There was one instance in which the FBI reimbursed the tuition fees for an asset to attend a university."

Interviews of only a "limited number" of people were conducted, due to concerns about public disclosure of the FBI's investigation. FBI inspectors stated, "Objections to this technique were voiced by the interviewees as a result of interviews conducted in Milwaukee. Consequently, the Dallas [field office] requested that no further interviews be conducted."

Trash discarded by CISPES members was examined in six field offices, with subsequent leads sent out to obtain background information on individuals and to determine the subscribers to telephone numbers named or listed in the discarded materials.

Financial records, as defined in the Right to Financial Privacy Act, were obtained in six field offices to determine the flow of money among CISPES chapters.

Telephone toll records were obtained in fourteen field offices, and a large number of leads were set forth to determine subscriber information based on the toll record leads. The FBI found no indication that investigative technique enhanced the CISPES investigation.

Other investigative techniques used in the CISPES investigation were found to include: utility subscriber checks; license checks; monitoring radio and television programs; credit bureau checks; employment checks; criminal record checks; FBI indices checks; and checks of various other U.S. government agencies. One FBI office acquired educational record information in violation of applicable policy.

7. CISPES Spin-Offs and Other Group Investigations.—The FBI investigations of 25 groups discussed in Part Three on spin-off investigations and references to other groups may be summarized as follows:

Spin-off group investigations (9)
- —Group identical to CISPES chapter, with different name (1)
- —Limited investigations for specific purposes (3)
- —Investigations based on classified information linking group with subject of non-CISPES investigation (2)
- —Groups sharing CISPES political views (3, plus 1 reopening)

From the list of 200 groups (10)
- —Spin-offs on above list (4)
- —Local CISPES chapter (1)
- —Groups identical to CISPES chapters, with different names (3)
- —Subjects of separate classified investigations (5)
- —Groups sharing CISPES's political views (3, plus other elements of one spin-off group)

Policy questions are raised by the investigations of groups sharing CISPES's political views. These questions are common to FBI international terrorism intelligence investigations and FBI domestic law enforcement and public safety responsibilities. Several CISPES-related groups appear to have been investigated on the basis of their ideological position or philosophical sympathies under both the classified foreign counterintelligence guidelines and (in one case for a brief period) under the unclassified domestic security/terrorism guidelines.

If the FBI has a legitimate investigative interest in one group, how far may it go to investigate associated groups that share similar political goals? FBI officials testified that spin-off investigations should meet the same threshold standards as an original investigation.[42] The question is whether, if there had been a proper predicate for the CISPES investigation, investigations of other groups should have been opened as a result of their political associations or ideological sympathy with CISPES. The potential is great for what has been described as an "inkblot effect" to encompass legitimate political organizations within the scope of an FBI inquiry without clear justification. This concern should be taken into account in revising and clarifying FBI and Justice Department policies.

A separate concern prompted by the Committee's review of these cases involved the FBI's practice of passively receiving and disseminating information on political protest demonstrations on the grounds it may be required for public safety purposes. This appears to be a fairly routine practice, especially with information from local law enforcement agencies and other established FBI liaison contacts in both government and private sector institutions. The line between passive receipt and informal solicitation is hard to define and may not necessarily be reflected in FBI files. More importantly, an undetermined but substantial amount of information about protest demonstrations by a wide range of groups across the ideological spectrum is acquired, maintained and disseminated by the FBI. Many, if not most, of the demonstrations reported on posed no threat to the public safety, but the information is perpetuated in the files of the FBI and other agencies.

FBI officials contend that this is an entirely legitimate function and is not intended to have any adverse implications or consequences for the groups whose political activities are thereby recorded in FBI files. In their view, the collection and dissemination of information regarding the strength and purpose of demonstrations is a legitimate function of the FBI for the purpose of providing information about activities that could adversely affect the security of U.S. Government and, in some instances, foreign officials. This issue must be addressed through continuing oversight by the Intelligence and Judiciary Committees of the policy changes and remedial measures undertaken by Director Sessions and discussed further below.

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[42] Ibid., p. 135.

II. FBI MANAGEMENT AND SUPERVISION

A. OVERVIEW

The FBI's investigation of CISPES was an aberration among thousands of counterintelligence and counterterrorism investigations the FBI conducts annually. Nevertheless, in an otherwise well-managed organization, the CISPES international terrorism investigation was a serious failure in FBI management and supervision both at Headquarters and in the Dallas field office. It resulted in the investigation of domestic political activities protected by the First Amendment that should not have come under governmental scrutiny.

The most critical breakdown involved the handling of Frank Varelli as an FBI source. The mishandling of Mr. Varelli had broader damaging consequences than just the CISPES investigation, because of the access he was given to classified FBI documents and the relationship he was allowed to maintain with elements of a Salvadoran security service. While no definite evidence has been found, the possibility exists that Mr. Varelli may have compromised classified information from FBI investigations and other U.S. Government agencies, perhaps under the impression that he was acting with the permission of his FBI handler in the Dallas office, Special Agent Flanagan.

To its credit, the FBI faced up to these problems in its internal investigation by the Inspection Division. Director Sessions testified, "Important aspects of the process by which the CISPES investigation was managed at certain levels of FBI Headquarters were flawed." [43] He also concluded that the flawed execution of the investigation "reflects mismanagement." [44] His assessment was "that the CISPES investigation was an aberration . . . an unfortunate aligning of mistakes of judgment at several levels that cumulatively led to an investigation of which the FBI is not proud." [45] He specifically acknowledged "that a number of deficiencies in the handling and management of Frank Varelli resulted in a failure to investigate Varelli's background properly and resulted in undue reliance being placed on the information he provided." [46] Director Sessions disciplined six current FBI employees at the supervisor, unit chief, and section chief levels, "because of the managerial or supervisory inadequacies displayed by them during the CISPES investigation." And he ordered that a series of actions be taken to make "significant improvement [in] FBI management procedures and policies" so as to "substantially increase the likelihood that future CISPES cases will not occur." [47]

In making an independent evaluation of the Director's findings and actions, the Senate Select Committee on Intelligence examined not only the FBI inspection report itself, but also the investigative methods used by FBI inspectors to reach their conclusions on critical issues. The Committee looked with particular care at the questions of White House political influence on FBI decisions and the role and responsibility of senior FBI officials above the level disciplined by Director Sessions. As explained below, the Committee is satisfied that the Director's conclusions on these matters are solidly based and that he has identified most of the problems in FBI management and supervision that contributed to the mistakes made in this case. The Committee cannot entirely rule out the possibility that other evidence may come to light on the circumstances of key decisions. Nevertheless, the overwhelming record of documentary materials and sworn statements indicates that the FBI itself was responsible for the CISPES and Frank Varelli problems.

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[43] Ibid., p. 122.
[44] Ibid., p. 123.
[45] Ibid., p. 124.
[46] Ibid., p. 127.
[47] Ibid., pp. 128-129.

Senior FBI officials, above the section chief level, lacked sufficient direct, personal involvement to warrant disciplinary action. However, senior officials must always assume ultimate responsibility to correct administrative weaknesses which allow improper activities like those in the CISPES case to occur. In the early 1980s, the FBI inspection division identified and reported some of the administrative problems that later allowed the CISPES breakdown to occur. Actions should have been taken at that time to remedy those deficiencies. Had it not been for public exposure of the scope of the CISPES investigation in 1988 and the resulting Congressional concern, the FBI would still be operating with those same administrative weaknesses at the risk of repeating the CISPES and Frank Varelli mistakes.

B. THE HANDLING OF FRANK VARELLI

Director Sessions testified that the failure in the Dallas field office to conduct adequate background checks on Frank Varelli or to recognize discrepancies in the information he provided was due to "negligence." [48] He went on to state:

> . . . [O]ut of hindsight, we know now that Mr. Varelli's background was not checked, he was not properly and thoroughly reviewed and there was just negligence all along the line [in connection with] acquiring information and failure to check it out.[49]

The Director also addressed the question of whether Mr. Varelli's ability "to pass information back from the FBI files to the Salvadoran National Guard" in fact compromised the security of FBI information or operations. Director Sessions stated,

> It is my belief that he acquired those reports through the Agent who was supervising him. I do not know whether he communicated that information from those reports to the Salvadoran National Guard or not. He had the information apparently, so it's logical that he could have. But that would be merely speculative.[50]

According to the FBI, Mr. Varelli had access to FBI classified documents, in violation of FBI regulations, from which he prepared written reports. That access could have compromised sources and methods. Thus, the FBI's relationship with Mr. Varelli raises issues of counterintelligence and professional competence going beyond civil liberties concerns.

1. Contacts with the Salvadoran National Guard.—The mishandling of Mr. Varelli may have not only compromised intelligence sources and methods, but also jeopardized the personal safety and human rights of individuals. Mr. Varelli has publicly admitted passing FBI information to the Salvadoran National Guard; the Committee has found no definite evidence to corroborate or refute his claim.

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[48] Ibid., p. 134.
[49] Ibid., p. 135.
[50] Ibid., p. 136.

The Senate Select Committee on Intelligence issued a public report in 1984 on *Recent Political Violence in El Salvador.*[51] The report sought to evaluate U.S. Government relationships with Salvadoran security services and possible "death squad" activities. The report stated,

> It is undeniable. . . that significant political violence—including death squad activities—has been associated with elements of the Salvadoran security establishment, especially the security services. The U.S. government has information which corroborates public claims that death squad activities, as well as other abuses provoked by extreme rightwing officers or their associates, have originated in the Salvadoran security services, including the National Police, National Guard and Treasury Police. The officers involved in these abuses appear to have been part of a rightist terrorist underground in El Salvador that has also included nongovernmental elements.[52]

Based on the information obtained at the time, the Select Committee was "satisfied that in maintaining [occasional] contact with the Salvadoran services through these officers, U.S. government officials did not themselves become involved with any extra-legal activities." [53] The Select Committee also believed "that U.S. intelligence personnel have been particularly careful, in their relations with Salvadoran officials, to emphasize that the nature of the relationship was limited and to maintain high professional standards in their contacts with the local security institutions." [54] The Select Committee specifically considered the dissemination of information to components of the Salvadoran government:

> It has also been alleged that U.S. government information concerning Salvadoran individuals has been provided to the security institutions in the absence of effective safeguards. This would raise the possibility of misuse of this information in support of political violence by security service personnel or their associates.[55]

The Select Committee found that such transfers of information largely involved tactical military data on potential insurgent paramilitary actions and that "information of a personal nature involving Salvadoran individuals has not been transferred to security-related elements of the Salvadoran government except in highly unusual cases." Because of the limited number of such cases, there did not appear to be "a high probability of misuse of such information." [56]

Mr. Varelli's access to FBI information and his unregulated contacts with Salvadoran security officials with the knowledge of FBI personnel clearly contradict those Select Committee findings and increase the probability that U.S. Government information was misused. The Frank Varelli contacts also undermined U.S. national policy, which sought in this period to discourage death squad activities by placing careful controls on U.S. Government relationships with Salvadoran security services. Salvadoran National Guard officials clearly believed they had a back channel to the FBI through Mr. Varelli, especially when a National Guard officer sought to visit the United States and meet with the FBI. FBI documents establish that Mr. Varelli's contacts with the Salvadoran security services were known within the FBI not only by Special Agent Flanagan, but also by FBI supervisory personnel in Dallas, at FBI Headquarters, and in other field offices which received reports from the Dallas office that were clearly derived from contacts with a Salvadoran security service. After Mr. Varelli addressed a conference at Quantico in early 1983, an experienced FBI official urged that Mr. Varelli's contacts with Salvadoran officials be curbed, but that advice was ignored.

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[51] Senate Report 98-659, U.S. Government Printing Office (Washington: October, 1984).
[52] Ibid., p. 11.
[53] Ibid.
[54] Ibid., p. 12.
[55] Ibid.
[56] Ibid.

The responsibility for this situation rests not with Mr. Varelli, who had no experience or training as a professional investigator, but with the negligence of FBI officials and an FBI administrative system that lacked adequate institutional checks.

2. The Evaluation of Varelli's Bona Fides and Information.—The FBI Director found that Frank Varelli was inappropriately classified as a reliable asset. Thus, the Dallas field office and FBI Headquarters failed to adequately conduct essential background checks in establishing his *bona fides* and failed to continually ensure his reliability and the accuracy of the information he was providing. Inconsistencies which arose in data on Mr. Varelli's background were never resolved, and timely CIA traces were not conducted. Voluminous materials furnished by Mr. Varelli were not properly scrutinized for accuracy and corroboration through normal investigative procedures. And there were examples of inaccurate and/or embellished reporting by both Mr. Varelli and his handler, Special Agent Flanagan.

Why was this allowed to happen? The answer goes well beyond the failings of particular FBI personnel. The administrative practices in the Terrorism Section at FBI Headquarters made a single supervisor responsible for reviewing and approving both substantive investigations and the *bona fides* of the particular sources used in those investigations. There was no mechanism for independent examination of the credibility of sources of information that an FBI field case agent and the Headquarters supervisor might want to use because the information strengthened the case for an investigation. The contents of the administrative file on Mr. Varelli's background, activities and reporting were more than sufficient to show his doubtful reliability, but no one in the FBI ever examined that file carefully. With skilled professional handling under careful supervision and with an appreciation of his weaknesses, there is a chance Mr. Varelli could have become a reliable source for use in legitimate FBI investigations of left-wing or right-wing Salvadoran terrorism. That would have required analysis of his reporting to determine his direct personal knowledge, as opposed to speculative generalizations and the rewriting of publications, and the formulation of precise directions to resolve discrepancies and test his access.

Director Sessions highlighted in his testimony both this problem and the need to change the system:

> First, I have instructed that the Intelligence Division establish a unit dedicated to managing all foreign counterintelligence and international terrorism assets in a manner similar to the way in which criminal informants are now being managed. I have taken this action to make certain that our assets receive uniform and independent oversight, thereby vastly increasing the likelihood that deficiencies of the type revealed in the Varelli case will be detected by Headquarters and acted upon promptly.
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> Second, I have instructed that a number of additional procedural changes be instituted to ensure that undue reliance will not be placed on information provided by assets. For example, there were numerous instances where Varelli provided information to the FBI that, upon reexamination, was determined not to be firsthand information but was in fact public source information. Accordingly, I will now require that information received from assets and informants be set forth in a manner that will show, to the greatest extent possible, where the asset or informant obtained the information. Thus, if there is no indication in a document as to the original source of an asset's information, that information will now be judged accordingly.
>
> Third, whenever the FBI begins development and utilization of an asset, I have instructed that his bona fides be systematically and thoroughly checked and that any information provided by the asset be systematically and thoroughly analyzed. This means that information about an asset and information from an asset will be subjected to uniform analysis before being characterized as "reliable." [57]

If Implemented with adequate resources at FBI Headquarters, these actions should reduce the likelihood that the problems associated with Mr. Varelli will recur.

Director Sessions acted to remedy deficiencies that should have been rectified much earlier. In 1982 the FBI Inspection Division prepared a Terrorism Program evaluation that examined the Terrorism Section's policy structure, as well as FBI training in the field and at FBI Headquarters in the development and operation of human source assets. In 1983 the Inspection Division completed a study of informant development and operations that stressed the importance of the role of informants in bringing criminal investigations to successful conclusions and reviewed the training of all FBI Special Agents in developing and operating informants. The Inspection Division's Terrorism Program evaluation report contained critical findings and recommended corrective actions in these areas. Those actions were not effectively implemented because of internal disagreement and the lack of an adequate follow-up system by the Inspection Division, which was designed to serve the Director in a management oversight role. According to FBI policy at the time, the Director would have been apprised of the report, the recommendations and disagreements on implementation. There is no record, however, that he either saw or acted upon them.

Establishment of a mechanism for independent review of FBI resources in terrorism investigations is desirable as a counterintelligence matter to detect deception and uncover foreign "plants," as well as to ensure that investigations are soundly predicated under applicable guidelines. In cases such as Frank Varelli and CISPES, good counterintelligence tradecraft and propriety concerns tend to coincide.

3. FBI foreign area awareness.—These reforms may not be enough, however, to address another weakness brought to light in this case. No matter how careful the internal review of a source's background and reporting, the FBI has special problems in assessing by itself source reports on situations abroad. The FBI Headquarters supervisors and Dallas field office case agents who handled Mr. Varelli and CISPES had no prior background knowledge of Central America or El Salvador. And there was practically nowhere they could turn within the FBI for that knowledge. This appears to have been one reason why they failed to appreciate the significance of the outrageous assertions about prominent Salvadorans, such as President Duarte, contained in Mr. Varelli's reports. Furthermore, there is no indication that Special Agent Flanagan or those FBI officials responsible for supervising his activities in Dallas or at FBI Headquarters realized that Mr. Varelli's contacts with the Salvadoran National Guard risked FBI implication in notorious rightwing death squad activities and conflicted with U.S. national policy toward El Salvador.

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[57] SSCI Hearings, September 14, 1988, p. 127.

Besides lacking its own expertise, the FBI Terrorism Section appears to have sought and received little assistance from other elements of the U.S. intelligence community. A review of the FBI Headquarters and Dallas field office files on Mr. Varelli, the CISPES investigation, and related matters indicates that few of Mr. Varelli's reports on Salvadoran matters were disseminated to other agencies and no feedback was received from them. A single FBI Headquarters supervisor was responsible for all FBI investigations related to Central American terrorism, including the criminal investigations of possible support to rightwing Salvadoran death squads and Nicaraguan Contra. That supervisor had regular contacts with his professional counterparts in the State Department and other elements of the U.S. intelligence community, and those other agencies had numerous experts on El Salvador whose knowledge and experience might have helped in evaluating Mr. Varelli's reports. But the reviewed files and Select Committee inquiries suggest that the Headquarters supervisor never discussed Mr. Varelli's information with outsiders, except on one occasion in mid-1984 when Mr. Varelli's allegations about a threat to the President came to the attention of other agencies.

Even today, FBI Terrorism Section personnel appear to continue, perhaps through no fault of their own, to lack background knowledge of foreign political developments and personalities relevant to FBI international terrorism investigations. Terrorism Section supervisors are FBI Special Agents with field investigative skills developed within the United States, not analysts or career officers with extensive foreign experience. The FBI does not have the resources to staff its international terrorism program with a large cadre of foreign area specialists. Given these resource constraints, the FBI should fill the gaps in its knowledge not only by improved selection and training of its own employees (e.g., action in recent years to form a small cadre of career, non-Agent analysts), but also by more effective interagency, communication and consultation. This is absolutely essential in circumstances where FBI counterterrorism intelligence sources are in contact with officials of foreign governments.

Director Sessions has not addressed this aspect of the management and supervision problem arising from the Frank Varelli case. Nor does there appear to have been consultation with other elements of the U.S. intelligence community on the lessons of this case for improving interagency communication. The Senate Select Committee on Intelligence believes that such consultation is necessary to ensure that the FBI is able to evaluate adequately any sources similar to Mr. Varelli and to ensure that the activities of such sources are consistent with U.S. policy.

C. SUPERVISION OF THE CISPES INVESTIGATION

Based on the FBI Inspection Division report, Director Sessions concluded "that the review and approval processes for the CISPES investigation were insufficient and were carried out at too low a level, given the sensitivity of this type of investigation." [58] There was indication that Director Webster "had signed off on specific matters" in the course of the investigation, but Director Sessions testified that with respect to the overall investigation his predecessor "did not know and had really no way under our system then of knowing unless it was brought to his attention, and it was not, is my understanding." [59] On the decision to broaden the scope of the investigation. Director Sessions reported that, "put simply, the supervisory personnel at FBI Headquarters who should have reviewed and analyzed this decision and appreciated its significance failed to do so." [60]

Other "important aspects" of headquarters management of the investigation also "were flawed:"

> There was no . . . system in place to ensure timely and appropriate review of incoming information. The field Agents collecting information on CISPES could reasonably have assumed that the information would be properly reviewed at FBI Headquarters, but in many cases it was not; it was simply placed in files and left there. Similarly, some requests for guidance from the field went unanswered at FBI Headquarters. The personnel responsible for the supervisory system as it then existed at FBI Headquarters failed to ensure that the activities of those conducting the investigation were properly reviewed.[61]

This is strong self-criticism of FBI by its Director. Moreover, according to Director Sessions, some problems could be attributed to the Attorney General's guidelines, which "were not designed to give guidance" on aspects of the CISPES investigation such as "the extent to which leaders and members may be investigated during an investigation of a group to which they belong." [62] The classified guidelines failed to provide "specific guidance regarding international terrorism investigations of fairly broadly-based groups like CISPES." [63]

In addition to administrative deficiencies, Director Sessions identified an underlying need for better understanding within the FBI of the need to accommodate effective counterterrorism efforts to respect for First Amendment rights. He testified:

> Probably the most critical area requiring attention was how to conduct investigation of groups where legitimate First Amendment activities were being undertaken by the rank-and-file members. I found that, in the CISPES investigations, guidance on dealing with activities protected by the First Amendment was given to the field

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[58] Ibid., p. 125.
[59] HPSCI Hearing, September 29, 1988, p. 29.
[60] SSCI Hearings, September 14, 1988, p. 122.
[61] Ibid.
[62] Ibid.
[63] Ibid., p. 124.

offices in many instances. In spite of this, Headquarters received reports on such activities that failed to specify why the reports were necessary.[64]

As discussed below, the Director has instituted a number of measures to improve the way the FBI handles international terrorism cases with First Amendment implications. The importance of those measures cannot be fully appreciated, however, unless there is an explanation of how the internal and external checks in place under Director Webster failed to keep the FBI on the right track.

1. Internal FBI supervision.—Since 1976, under three Directors and five Attorneys General, the FBI has operated within a framework of guidelines and oversight designed to prevent the Bureau from conducting investigations that intrude unreasonably into political activities protected by the First Amendment. Written Attorney General's guidelines have been supplemented by formal and informal institutional checks, including review of investigations by the Office of Intelligence Policy and Review in the Justice Department, regular congressional oversight, and the assignment of specific responsibility to certain key officials within the FBI to ensure careful attention to First Amendment issues. In the Intelligence Division, a special assistant to the division head maintains a small staff to advise the division on guidelines interpretation; and Director Webster brought onto his personal staff an experienced FBI official who had participated in the drafting of Attorney General Levi's initial guidelines and basic legislation such as the Foreign Intelligence Surveillance Act of 1978.

The principal chain of command at Headquarters for an internatioal terrorism investigation is from the case supervisor to a unit chief, the Terrorism Section chief, a Deputy Assistant Director, the Assistant Director for the Criminal Investigative Division, an Executive Assistant Director (essentially vacant during 1983–85), and the Director. These officials have the formal responsibility for administration of the international terrorism program and for approval of particular activities that require authorization at higher levels under applicable policies and procedures.

Under Director Webster during the 1980s, senior Criminal Investigative Division officials emphasized what was called "program management," rather than case-by-case supervision of every field investigation. They stressed delegation of responsibility to the field for the conduct of particular investigations in accordance with general program instructions and objectives provided by the supervisors and units at Headquarters. Apart from specific actions requiring Headquarters approval, field offices were not generally expected to seek or receive advice from Headquarters on the handling of particular cases. And the task of a Headquarters supervisor was generally to provide program direction for a large number of related cases, rather than to monitor the progress of each investigation.

Both special assistants were consulted occasionally by the Terrorism Section during the CISPES investigation on legal and policy issues, but neither had responsibility for closely overseeing the conduct of the CISPES investigation. Significant communications and instructions were often routed to the special assistants, and they had regular contacts with the Justice Department review unit and the Congressional oversight committees. There was a gap, however, between the responsibilities of the two special assistants. The special assistant in the Intelligence Division could examine closely the predicate and scope of counterintelligence investigations supervised by that Division that raised First Amendment issues. And the special assistant in the Director's office played a similar role in closely reviewing *domestic* terrorism investigations conducted under the unclassified Attorney General's guidelines and supervised by the Terrorism Section in the Criminal Investigative Division. But neither assistant had such a function in *international* terrorism cases, apparently because such investigations were supervised outside the Intelligence Division and had not previously raised serious First Amendment policy issues coming to the Director's attention.

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[64] Ibid., p. 126.

Both special assistants were consulted by the Terrorism Section during the CISPES investigation, but neither reviewed it closely. FBI files indicate that the special assistant in the Intelligence Division was consulted on the initial instructions to the field which limited the scope of the investigation and source reporting, but was not consulted when the supervisor in the Terrorism Section decided later to broaden the scope to include demonstrations, long-distance phone records, and eventually every CISPES chapter nationwide. The special assistant in the Director's office recalls that he was consulted on instructions sent to the field in July, 1984, and supplied draft language to the Headquarters supervisor, but did not see the final version of the communication which was sent out and led to further questions from the field. The Director's special assistant also recalls advising that while, in his view, the Attorney General's guidelines permitted an umbrella investigation, the better practice would be for the FBI to focus its investigation on those elements of CISPES involved in a terrorist "enterprise." But the Terrorism Section never rescinded the instructions to investigate all CISPES chapters until the case was closed in June 1985. The Director's special assistant conferred with the unit chief in the Terrorism Section to prepare for Director Webster's testimony on CISPES before the House Permanent Select Committee on Intelligence in May, 1985. He recalls that based on the information provided to him, he had no reason to question the predicate for the investigation, and thus he did not pursue the issue further. If the case had been opened under the *domestic* security/terrorism guidelines, he believes he would have looked at the predicate closely.

The gap was not filled by the Criminal Investigative Division itself. Consistent with the program management approach, the Terrorism Section chief and unit chiefs also do not appear to have questioned the Headquarters supervisor's evalution of the predicate or to have reviewed carefully the instructions sent to the field. They and the Assistant Director for the Criminal Investigative Division knew and approved of the opening of the CISPES international terrorism investigation, but appear to have deferred to the supervisor's judgment. After a new unit chief arrived in mid-1983, he was briefed on the case by the supervisor and began seeing communications that were routed to the supervisor to handle. But thereafter, the only time the unit chief and his superiors became actively involved in the case was to deal with personnel and administrative problems arising in 1984 from Special Agent Flanagan's misconduct.

Director Sessions determined that the section chief and a unit chief should be disciplined for their role in the case, but the FBI Inspection Division findings and the reviewed FBI files do not suggest that these people personally initiated or proposed significant steps in the investigation. Rather, the FBI Director found a lack of managerial controls within the Terrorism Section, especially during the CISPES investigation. Indeed, there is still confusion in relation to the predication for the CISPES investigation. The evidence indicates that the unit chief and section chief somehow developed an erroneous picture of the predicate for the CISPES investigation and conveyed that impression to their superiors.

Both appear to have believed that CISPES was in some way involved in the funding and/or setting up of training camps for Salvadoran FMLN guerrilla fighters inside the United States. This was not the case. The FBI found nothing in its files to connect CISPES with the allegations that were received by the FBI that such training camps existed. It is unclear how this misperception was created.

Confusion apparently existed as well in the unit chief's perception of the scope of the CISPES investigation. Director Sessions testified that Director Webster's special assistant recalls being briefed by the unit chief in preparation for Director Webster's appearance before the House Permanent Select Committee on Intelligence on May 1, 1985. Based on that briefing, Director Webster testified that the CISPES investigation was narrowly limited. He submitted a follow-up letter dated May 28, 1985, which stated, "The FBI conducted investigations only of those CISPES leaders and key members who were believed to be involved in covertly furnishing funds and materials to the FMLN/FDR." A similar statement had been made when the unit chief and supervisor briefed staff of the Senate Select Committee on Intelligence in 1984. According to Director Sessions. "The response in question was coordinated with the appropriate unit chief, who should have known that the response was not accurate. The unit chief advised that he in fact believed that the response was accurate." [65]

As a result of this confusion in the Terrorism Section, senior FBI officials and the Intelligence Committees were led to believe that the CISPES investigation had a stronger predicate and a far narrower scope than was in fact the case. Apart from that, the administrative mechanisms in place during the CISPES investigation were clearly inadequate to provide effective supervision of international terrorism investigations that raised significant First Amendment issues. It is now apparent that such cases should have received the same type of close supervision as Intelligence Division activities and domestic security/terrorism investigations.

2. Justice Department review.—Attorneys in the Justice Department's Office of Intelligence Policy and Review (OIPR) reviewed three FBI Letterhead memoranda (LHMs) prepared by the Dallas field office on the CISPES international terrorism investigations.

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[65] HPSCI Hearing, September 29, 1988, pp. 16–17.

The first LHM was sent to FBI Headquarters in June, 1983, and reviewed by OIPR in September, 1983. A second LHM was sent in April, 1984, but was apparently never transmitted to OIPR. A revised version of the second LHM was sent from Dallas to FBI Headquarters in June, 1984, and reviewed by OIPR in September, 1984. The third LHM was submitted in March, 1985, and reviewed by OIPR in June, 1985. This final OIPR review determined that the information in the LHM did not meet the requirements of the Attorney General's guidelines, and that conclusion in turn triggered the FBI's decision to close the investigation. An OIPR memorandum to the FBI stated, "It appears this organization is involved in political activities involving 1st Amendment activities and not international terrorism." [66]

OIPR was established by Attorney General Griffin Bell in 1979. It is headed by the Attorney General's Counsel for Intelligence Policy, currently a career Justice Department attorney who previously served as Deputy Assistant Attorney General in the Office of Legal Counsel. In that capacity she chaired the committee that drafted the first Attorney General's guidelines issued by Attorney General Levi in 1976. The Deputy Counsel responsible for OIPR's operations review function is a career Justice Department attorney who also served on the Levi guidelines committee and was assigned by Attorney General Bell in 1977 to head a previous review unit that was merged into OIPR in 1979.

The Deputy Counsel described OIPR's review functions under the Attorney General's guidelines and the Foreign Intelligence Surveillance Act as follows:

> . . . I have five attorneys working full time on operational matters, mostly the Foreign Intelligence Surveillance Act, but we also review several hundred of these foreign counterintelligence investigations [of U.S. persons] conducted by the FBI. . . . [T]he attorneys who review these cases also prepare 500 or 600 FISA applications [From NSA and the FBI] each year, and they also review hundreds of requests for undercover activities under the exemption statute in which the Attorney General and the Director of the FBI exempt counterintelligence activities from certain statutory prohibitions [on certain commercial activity]. And the attorneys themselves come from a wide background. One woman is a former head of legal aid in Northern Virginia. A former [Assistant United States] attorney. And 2 criminal division attorneys. So they bring a lot of experience to these cases.[67]

OIPR receives LHM's on counterintelligence and terrorism investigations of U.S. persons "in batches," so there is generally a 1–2 month lag, and the Deputy Counsel assigned them to the attorneys in equal numbers for review. The normal turnaround time in OIPR is 10 working days. The Deputy Counsel testified that, in the CISPES context, OIPR "must have reviewed a substantial number of derivative cases and by 1985, we were very concerned about all of them. And wrote back to the Bureau expressing the same concerns, that the initial indications of terrorist activity . . . had not borne fruit, and the investigations had not substantiated them." [68]

The Deputy Counsel explained that the Attorney General's guidelines "really aren't intended to substitute the Department's judgment for the Bureau's. We're there for a safety valve. As a check."[69] According to the Counsel, OIPR generally makes no substantive decision and would not comment on the initial LHM that it receives after a case is opened, unless "something struck us as egregiously off base."[70] The Counsel explained further:

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[66] SSCI Hearings, April 13, 1988, p. 82.
[67] Ibid., pp. 80 and 84.
[68] Ibid., pp. 83–84.

> In terrorism cases, in particular, because of the nature of the threat, if at the outset there are allegations and there are activities that may be at the time ambiguous, could be either First Amendment or terrorist related, . . . we tend to give the benefit of the doubt to the Bureau and to those allegations. If time does not bear them out—and one of the differences between the 1984 and 1985 reports was the calendar year that had transpired. . . . Original allegations were simply not panning out.[71]

The standards become more stringent with the passage of time, so that "if, after two years pass, nothing has gone on to substantiate the allegations, we will take a hard second look and may very well close it down."[72] Looking back at the initial CISPES LHM with hindsight, the Counsel testified that she "would not have been troubled by it" because of the "allegations from a source in a position to know" (i.e., Mr. Varelli).[73] The Counsel added that in a case such as CISPES that did not involve FISA electronic surveillance, OIPR would have been unlikely to inquire further about the reliability of the source.[74]

Both officials testified that the reason the investigation was not discontinued in 1984 was that certain events, such as the bombing at the War College, led OIPR to believe that the information developed from the informant in 1983 still had some relevance. It was considered significant that "there was a phone call to a local radio station claiming credit for the bombing in the name of people in solidarity with El Salvador." OIPR would not have seen the results of the separate criminal investigations of the bombings (which had discounted the possibility of CISPES responsibility months before the second LHM was reviewed in 1984.[75]

The Deputy Counsel noted that the LHMs transmitted to OIPR normally do not contain information about the scope of the investigation, such as listings of "all of the field offices investigating it." From the substance of the LHMs, OIPR saw "reporting from several, maybe half a dozen field offices," rather than from the 30 or more listed in internal FBI administrative communications. Knowledge of this wider scope would have made a difference in OIPR review.[76] The Deputy Counsel also agreed that the CISPES investigation continued longer than it should have. The Counsel testified:

> We think that [the FBI] ought to put a harder timeline on some of these things than they do. They take the position that if we said it was okay to begin with, then renewal is okay forever. . . . And we really don't have that perspective . . . so we look at them harder and put them to it. But not all of these develop fast. There are instances where it can be a very long time building and you don't want it to close. It depends on each fact situation.[77]

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[69] Ibid., p. 105.
[70] Ibid., pp. 81-82.
[71] Ibid., p. 87.
[72] Ibid.
[73] Ibid., p. 89.
[74] Ibid., p. 92.
[75] Ibid., pp. 102-103.
[76] Ibid., p. 96.
[77] Ibid., p. 107.

The Counsel was reluctant to have her Office play a much larger role in the process, because of a belief that the FBI itself should be capable of making responsible decisions. She explained,

> These are professional investigators . . . they're supposed to be using good judgment. And if we take too much of that away from them and make them dependent on us, that would bother me. Now there is no way you can mandate common sense for Agents, but there is no way you can mandate common sense for the people in my office either. It would worry me . . . if we made them too dependent.[78]

The Deputy Counsel observed, however, that due to the turnover among FBI Headquarters supervisors with about 30 cases to manage, OIPR attorneys who have been reviewing cases for 7 or 8 years "very often . . . know more about the cases than the FBI agents do, simply because they have been working on them for so long." [79]

In their internal investigation of CISPES-related matters, FBI inspectors discovered a separate international terrorism investigation that the FBI continued for 15 months after OIPR questioned whether it met the requirements of the Attorney General's guidelines. The group under investigation was based abroad, but was considered to meet the definition of a "United States person" because of the apparent involvement of a substantial number of U.S. citizens or permanent resident aliens. The Counsel for Intelligence Policy advised FBI inspectors that, upon receipt of the OIPR memorandum, the investigation should have ceased. The FBI could have either closed the case or submitted additional information already in the FBI's possession which would justify continued investigation. As a result of this case, Director Sessions instituted new procedures to keep track of OIPR communications. In addition, the Committee believes OIPR should modify its own procedures so it is informed of the FBI's action in cases questioned by OIPR.

The Committee also believes the record of the CISPES investigation requires the Attorney General and the FBI Director to consider a more substantial OIPR role in reviewing FBI investigations with significant First Amendment implications, especially where broad-based groups like CISPES are involved. The FBI Terrorism Section has recently begun consulting OIPR at the early stages of some investigations, and consideration should be given to expanding this practice. The FBI should also provide OIPR a more complete picture of the scope and techniques used in the investigations of this nature which OIPR reviews, as well as a fuller explanation of the credibility of sources of information relied upon for the predicate.

3. The question of White House direction.—FBI inspectors found no evidence of White House instructions or inquiries to the FBI concerning the CISPES investigation. In addition to examination of internal FBI files on interagency group meetings, pertinent White House files were reviewed and numerous interviews were conducted and sworn statements taken from FBI personnel involved in the case and in the chain of command. The Select Committee has reviewed pertinent FBI files as well as the results of the inquiries conducted by the Inspection Division to ensure that this issue was examined thoroughly.

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[78] Ibid., p. 98.
[79] Ibid., p. 96.

The FBI Headquarters CISPES file contained eleven FBI communications to the White House. Senior FBI officials said this dissemination was appropriate to advise the White House Situation Room of places where the President or other high officials might encounter demonstrations. Committee examination of those messages confirmed the Inspection Division finding that they were routine reports and that dissemination to the White House was consistent with the stated justification. None of these reports suggested that the FBI was responding to previous White House direction with respect to CISPES. They advised of marches, demonstrations, rallies and protests; one alerted the White House to openly stated CISPES intentions to disrupt the 1984 Republican National Convention. The reports did not identify individuals involved in CISPES activities.

Two references were found in CISPES-related FBI Headquarters files to the policy of the Reagan Administration. They were generalized statements in memoranda discussing the need to devote more FBI resources to the investigation. They cited consistency with Administration policies in El Salvador as buttressing proposed initiatives. The first memorandum discussed the emphasis to be placed on Salvadoran-related terrorism investigations at a forthcoming nationwide conference of Special Agents in Charge of FBI field offices. It noted that "a statement of this type would certainly be in keeping with the policy of the current Administration." It could not be determined whether this statement was actually made at the conference in question. The second memorandum proposed an FBI conference on Salvadoran terrorism cases, including CISPES. To support the proposal, the author noted that these cases were of "key importance and concern of the Reagan Administration."

Notations on the documents indicate they were written by the Headquarters case supervisor, approved by the unit chief, and received by the section chief. These officials all denied in sworn statements that there were any White House contacts or influence on the CISPES investigation. The circumstances of the preparation of these memoranda do not suggest that either the documents or the underlying proposals contained in them were motivated by Administration officials, and the references in question do not appear to have had a significant impact on the investigation.

FBI inspectors found two documents in field office files which reflected minimal contacts that might be construed as Administration-related. A document in the Dallas field office CISPES file reported that a local law enforcement employee had advised the FBI that a retired military officer said he had a White House document stating, "that CISPES was a militant group." FBI inspectors interviewed the retired officer, who told them he had been given the document at a White House meeting with Presidential aid Faith Ryan Whittlesey in mid-1984 where the military officer and his associates voiced concern about the President's safety at the upcoming Republican Convention in Dallas. The military officer said he passed the information about CISPES to Dallas police, but kept the document (which he could not readily locate). Ambassador Whittlesey told the FBI she did not recall the meeting, but did recall a general discussion concerning CISPES. She said she did not have any FBI reports on CISPES, nor was she aware of the FBI investigation of CISPES. In the files of another field office, FBI inspectors found a publication sent to the FBI by a Republican Party official. The publication was a critical account by local private citizens of a group which was organizing travel to Nicaragua. The document was filed by the field office and was not disseminated further or used as the basis for any other action. Neither of these incidents had any noticeable impact.

There were several instances in which the FBI disseminated to field offices political publications relating to CISPES that were provided by conservative groups. A draft article by an official of the Young America's Foundation purported to expose "a DC CISPES project designed to provide direct military assistance to the terrorist FMLN/FDR in El Salvador." The material was disseminated by the Headquarters case supervisor to 32 field offices. Such dissemination without accompanying evaluation, which the Executive Assistant Director of Investigation later testified was inappropriate,[80] may have suggested to the field that FBI Headquarters confirmed the validity of, or otherwise endorsed, the contents; but there was nothing in FBI files to indicate subsequent reliance on it. FBI inspectors did determine that two White House officials were members of the board of directors of the Young America's Foundation when the Foundation official sent the article to the FBI. In interviews, however, the two White House officials denied any knowledge of, or any role in, the preparation of the article or its transmission to the FBI. The author of the letter and article said copies were sent to 500 officials in the Executive branch and Congress. FBI documents reviewed by the Committee indicate that the decision to send out the article FBI field offices was made by the Headquarters supervisor on his own.

In a second instance, the FBI Washington field office disseminated to FBI Headquarters and 13 field offices material on CISPES obtained from Students for a Better America, Inc. In this case, the material was characterized as coming from "a right-wing group" and was provided to "give the reader a more balanced idea of CISPES." On a third occassion the Washington field office disseminated to FBIHQ and 14 other offices a critical pamphlet described as a "right wing view of CISPES" with "very good background and historical information on CISPES." At the same time, however, the Washington office disseminated CISPES publications giving the group's own account of its history, structure, and activities.[81]

FBI inspectors found that FBI officials participated in two interagency groups on terrorism during the period of the CISPES International Terrorism investigation (March, 1983 to June, 1985). The FBI representative to the Terrorist Incident Working Group (TIWG) during this period was the Executive Assistant Director for Law Enforcement Support. His sworn statement says that he recalls no White House influence or inquiries regarding the FBI investigation of CISPES or any other Central American case. He also said he filed a memo for the record on each TIWG meeting. FBI inspectors reviewed the TIWG file and determined that these memoranda confirm his recollection.

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[80] SSCI Hearings, February 23, 1988, p. 58.

[81] See above, pp. 49–50.

The Assistant Director in charge of the Criminal Investigative Division did not begin representing the FBI at TIWG meetings until his promotion from Assistant Director to Executive Assistant Director in July, 1985, a month after the CISPES investigation was closed. While he was Assistant Director during the CISPES investigation, there was a lower-level Interagency Working Group on Terrorism (IGT) to which the Deputy Assistant Director for the Criminal Investigative Division was the FBI's representative, with the Terrorism Section Chief as the alternate. Their sworn statements to the Inspection Division said that they recalled no White House influence or inquiries. FBI inspectors reviewed the FBI file on the IGT and found no reference to Salvadoran terrorism or CISPES.

The Inspection Division interviews of Director Webster and his special assistant did not specifically address the role of the TIWG or IGT, but did elicit a general disclaimer of knowledge of any White House involvement with the CISPES case.

In sum, the Committee found no reason to disagree with the conclusion in the FBI Inspection Report that "found no evidence . . . that . . . instructions were given or requests for information were made to FBI offficals during the conduct of the CISPES investigation by anyone within the office of the White House or acting on behalf of the White House in an effort to influence their investigation."

4. Violations of Applicable Policies and Procedures.—FBI inspectors examined the record of the CISPES investigation for possible violations of federal law and applicable policies and procedures, including the Attorney General's guidelines. They determined that former Special Agent Flanagan, who resigned from the FBI in 1984, had given Frank Varelli classified documents and had withheld money that was to have been paid to Mr. Varelli. Other than that, the FBI Inspection Division report did not identify any illegal acts or violations of constitutional rights committed by the FBI as part of the CISPES investigation. Director Sessions and the FBI inspectors did not address the question of violation of the Privacy Act. Subsection (a)(7) of the Privacy Act provides:

> Each agency that maintains a system or records shall . . . maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.[82]

This issue has been raised in a lawsuit filed by CISPES. It is for the courts to resolve the legal question whether continued maintenance of FBI records of the full scope of the CISPES investigation is "pertinent to and within the scope of an authorized law enforcement activity." The policy ramifications with regard to expunging the CISPES files are discussed later.

Other incidents raised questions of legality, but were determined not to constitute violations of law by FBI personnel. For example, an FBI source provided the FBI a copy of another person's address list by gaining unconsented access to the desk where the address list was located. The source apparently acted without proper authorization. There was no indication that the FBI directed the source to search the desk or seize the address list. In another case FBI Agents posing as potential home buyers toured the home of a subject of the investigation with a real estate agent. Although the Agents obtained approval for the visit from federal prosecutors in advance, the Justice Department Counsel for Intelligence Policy subsequently indicated that they may have exceeded the reasonable scope of consensual observation. Other incidents included the removal of a field office file on a CISPES spin-off investigation that was opened but apparently never conducted, and another incident where a corner of an FBI Headquarters document was cut off apparently to remove initials identifying an FBI employee responsible for the mishandling of an investigative matter. The FBI Agent responsible for the removal of the file had already resigned by the time of the Inspection Division inquiry; the FBI supervisors who handled the FBI Headquarters document were disciplined.

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[82] 5 USC 552a(e)(7).

Neither the FBI Inspection Division report nor the Committee's investigation found any evidence that the FBI was involved in any burglaries or illegal break-ins. Frank Varelli's allegations of such break-ins were investigated, and his evidence found wanting. Thus, for example, the FBI inspectors found that the Dallas field office had obtained from the local telephone company certain phone records that Mr. Varelli said he thought the FBI had acquired in a break-in.

The FBI Director identified thirty-one instances of possible violations of the Attorney General's guidelines and described them as mostly of a minor and technical nature. Director Sessions testified that the FBI's Legal Counsel Division "opined that only fifteen of these instances were in fact violations, and that of those violations, thirteen warrant being reported to the President's Intelligence Oversight Board." [83] The FBI later decided to make the inspection report itself available to the Board for their review, as opposed to just reporting specific violations.[84]

The difference of opinion between the Inspection Division and Legal Counsel Division primarily concerns the extent to which the FBI is permitted to make inquiries about an individual under the "umbrella" of a group investigation. As interpreted by the Legal Counsel Division, the guidelines permitted the FBI to open an investigation of a group and then make substantial inquiries about individuals connected with the group, without having to open separate investigations of those individuals. The Inspection Division interpreted the guidelines as placing very strict limits on the inquiries that can be made without opening a separate investigation. This disagreement highlights the need for better guidance on this issue, as discussed below with respect to remedial measures. The Justice Department Counsel for Intelligence Policy has subsequently adopted a prospective interpretation of the guidelines on this issue.

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[83] SSCI Hearings, September 14, 1988, p. 123.

[84] HPSCI Hearing, September 29, 1988, pp. 32-33.

In several cases, the Inspection Division and the Legal Counsel Division agreed that the FBI's inquiries about an individual under the "umbrella" of the CISPES investigation were so extensive that they violated the requirement to open a separate investigation. The two divisions also agreed that it was a violation to use an individual CISPES spin-off investigation as an "umbrella" for inquiries about another person, as occurred in a few cases.

The Director found that three individual spin-off investigations violated the Attorney General guidelines because they did not have a sufficient predicate. One of these cases was a Xavier University professor who was investigated on the basis of an exam question and a speaker invited to the class. Director Sessions indicated in the September 14, 1984, hearing that he shared a Select Committee member's concern over "the threat to academic freedom and civil liberties that this sort of investigation poses." [85]

The FBI Director also concluded that the CISPES investigation was overbroad in that it included "rank and file members" of that group.[86] Predication for spin-off investigations of such individuals was weak in many instances. While the Committee is not in a position to interpret Executive branch guidelines, the weakness of the predication in these other cases is a matter of concern. Spin-off investigations were apparently initiated solely on the basis of attendance at the showing of a CISPES sponsored film, the appearance of names on lists of participants at CISPES conferences, and similar associations having no other relevance to the purpose of the original investigation.

The FBI Inspection Division report did not discuss the possibility that Frank Varelli's infiltration of the Dallas CISPES chapter in mid-1981 violated the Attorney General guidelines or FBI procedures. Whatever may be the technical interpretation of particular guidelines provisions, this activity was unjustified. FBI documents indicate that Mr. Varelli's actions were authorized on the basis of a claim that CISPES was part of a Salvadoran revolutionary guerilla group which the FBI had a legitimate reason to investigate, and that such a connection between CISPES and the other group was unsupported. Better guidance to FBI field offices is needed, because the Attorney General guidelines and FBI policies do not appear to address this type of situation adequately.

Some guidelines violations involved the failure to observe time limits and review requirements. The most significant of these did not relate to the CISPES investigation, but to another case that came to the attention of FBI inspectors in their review of the CISPES investigation. This separate investigation continued for more than one year after a Justice Department OIPR determination that available information did not meet the standards of the guidelines. In a few other cases "minimal" investigative activity was conducted after the authority for an investigation had expired. Several more violations concerned requirements to report to the Justice Department's Office of Intelligence Policy and Review. The remaining violations involved isolated instances where particular investigative techniques were used without required approvals.

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[85] SSCI Hearings, September 14, 1988, p. 145.

[86] Ibid., p. 122.

The FBI Inspection Division report, notably, does not consider the FBI Headquarters decisions to open the CISPES investigation without properly validating the predicate, and to expand the scope of the investigation beyond those elements of the group reasonably suspected of knowing involvement in the alleged activities providing the predicate, to be violations of Attorney General guidelines. This position is at least questionable.

Certain instances of noncompliance with other internal FBI procedures were as serious as many of the Attorney General guidelines violations. Telephone toll records were obtained by fourteen field offices, and approval for these requests within the Criminal Investigative Division never reached the level of authority required by previous instructions of the Director. In one case an FBI field office violated FBI policy on accepting school record information protected against disclosure by the Buckley Amendment (20 USC 1232g).

At the FBI field office level, there was impressive adherence to applicable guidelines and procedures, with only two offices exhibiting more than isolated discrepancies. Overall, the most significant problems in the FBI's CISPES investigation were not the violations of specific guidelines and internal procedures identified in the FBI Inspection Division report, but the errors in supervsion and management that produced the CISPES investigation as a whole. Indeed, modifications and interpretations of such guidelines and procedures, as Director Sessions has recognized, solve but a part of the problem.

III. Remedial Measures

Director Sessions has instituted a variety of remedial measures to improve the management and supervision of FBI investigations that raise First Amendment issues, especially in the international terrorism field. These address the recommendations made in the FBI Inspection Division report, plus additional policy and procedural changes developed after Director Sessions reviewed that report.

A. THE HANDLING AND MANAGEMENT OF SOURCES

As discussed previously, Director Sessions has made substantial changes in the system for handling and managing sources in international terrorism investigations. These include: (1) establishment of a separate unit dedicated to managing all foreign counterintelligence and international terrorism sources in a manner similar to the way criminal informants are managed; (2) a requirement that information received from sources be reported in a form that shows, to the greatest extent possible, where the source obtained the information; and (3) a requirement for systematic and thorough checks of the *bona fides* of a source and systematic and thorough analysis of any information provided by a source, before the source's information is characterized as "reliable."

These measures not only should improve the FBI's operational effectiveness in handling sources, but also should make it less likely that investigations affecting First Amendment rights will be conducted without a solid factual justification. The Committee also believes that, as mentioned earlier, the FBI's lack of foreign area expertise requires consultation with other elements of the U.S. intelligence community to ensure adequate evaluation of sources similar to Frank Varelli and to ensure that the activities of such sources are consistent with U.S. policy.

B. ATTORNEY GENERAL'S GUIDELINES

In explaining his actions in testimony before the Select Committee, Director Sessions began with "a basic conclusion" that the Attorney General's guidelines "do not contain sufficient guidance and sufficient specificity regarding international terrorism investigations of groups that are primarily composed of persons in the United States." Director Sessions attributed this weakness to the fact that the classified Attorney General's guidelines "were primarily designed to give guidance in foreign counterintelligence investigations" which focus on hostile intelligence services, their officers and agents, and groups which are covertly funded by foreign powers for intelligence-related purposes. Director Sessions gave two illustrations of the lack of adequate guidance in international terrorism investigations:

> For example, the guidelines do not describe the extent to which leaders and rank-and-file members may be investigated during an international terrorism investigation of a group to which they belong. Nor is there specific guidance regarding international terrorism investigations of fairly broadly-based groups like CISPES.

To obtain the necessary guidance, Director Sessions "asked the Attorney General to approve the formation of a Department of Justice/FBI joint working group tasked with making recommendations to the Attorney General on modification of the guidelines to address specifically international terrorism investigations of groups."

The Director's statement emphasized the special problem posed by "groups that are primarily composed of persons in the United States," but that fall within the scope of the FBI's authority to conduct *international* terrorism investigations under classified Attorney General's counterintelligence guidelines—as contrasted with domestic security/terrorism investigations under separate unclassified Attorney General's guidelines. Most FBI international terrorism investigations involve groups that are based primarily abroad. But the FBI's authority for international terrorism investigations, based in part upon the Foreign Intelligence Surveillance Act (FISA), is not limited to groups based primarily abroad. Instead, under the FISA definition of "foreign power," the FBI's authority to employ electronic surveillance in international terrorism investigations extends to any group (wherever based) that is "engaged in international terrorism or activities in preparation therefor." [87] And the legislative history of FISA states that "preparation" covers such activities as "providing the personnel, training, funding, or other means for the commission of acts of terrorism, rather than one particular bombing." [88] Thus, the FBI's international terrorism jurisdiction, derived in part from FISA, includes domestic groups that are believed to be providing personnel, training, funds, or other means for the commission of terrorist acts abroad.[89]

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[87] 50 USC 1801(a)(4).

[88] Senate Report 95-701 (March 14, 1978), p. 26; House Report 95-1283 (June 8, 1978), p. 43.

While FISA electronic surveillance was not used in the CISPES investigation, the statutory terms of FISA have provided some legislative sanction for including within the scope of FBI international terrorism investigations domestic groups such as CISPES that are alleged to be providing funds or other means for the commission of terrorist acts abroad. An alternative, as embodied in the original Senate version of FISA, would have been to investigate such groups under the FBI's domestic law enforcement guidelines (with any electronic surveillance conducted under the criminal procedures of Title III of the Omnibus Crime Control and Safe Streets Act of 1968). The unclassified Attorney General's guidelines for FBI domestic security/terrorism investigations, issued first in 1976 and substantially revised in 1983, have not produced controversial cases raising First Amendment concerns similar to the CISPES case. At the same time, the unclassified Attorney General's guidelines do not appear to have inhibited the FBI from conducting effective counterterrorism investigations in the domestic field.

One advantage of the Attorney General's guidelines for domestic security/terrorism investigations is that they provide standards for the scope of investigations of groups. The Justice Department's Counsel for Intelligence Policy testified that the domestic guidelines say: "if you have an organization that is a mixed group, focus on the violent faction. You open on the faction, not on the whole." She added that if this had been done in the CISPES case, it "could have saved a lot of grief." The domestic guidelines use the term "enterprise" to refer to such factions. The Counsel suggested that similar rules could be written for international terrorism investigations.[90] She also recalled that the Department had previously looked at the possibility of separating the guidelines for international terrorism investigations from the guidelines for foreign counterintelligence investigations. This was not done "because some of the definitions are going to remain the same and some of the rules, certainly the FISA rules will be the same and it seemed perhaps a waste to try to separate them out." [91]

A disadvantage of using the domestic security/terrorism guidelines is that they define terrorism as involving a federal criminal violation. This might limit the FBI's ability to conduct counterterrorism investigations of domestic-based groups that commit acts of terrorism abroad, as did the anti-Castro group Omega 7 in the 1970s, because federal criminal statutes may not fully cover a conspiracy in the United States to commit a crime under foreign law. The Counsel for Intelligence Policy testified that U.S. courts have recognized "the obligation of the United States under international treaties to fight terrorism, whether or not it is directly aimed at the U.S." [92] The legislative history of FISA supported this view in explaining why "international terrorism" was defined to include certain violent acts abroad that would be state or federal crimes if conducted in this country:

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[89] The Senate version of FISA would have included terrorist groups within the definition of "foreign power" only if they were "foreign based" groups that actually engaged in "terrorism" as defined. The FBI favored a broader definition which was adopted in the House version of the bill and was agreed to in conference. In explaining the decision to adopt the House version, the conferees agreed "that the limitation to foreign-based groups may be unnecessarily burdensome and that surveillance of a group engaged in preparation for international terrorism may be necessary." House Report 95-1720 (October 5, 1978), p. 19.

[90] SSCI Hearings, April 13, 1988, p. 101.

[91] Ibid., p. 94.

> This departure from a strict criminal standard is justified by the international responsibility of [a government] to prevent its territory from being used as a base for launching terrorist attacks against other countries as well as to aid in the apprehension of those who commit such crimes of violence. We demand that other countries live up to this responsibility and it is important that in our legislation we demonstrate a will to do so ourselves.[93]

Even if there continue to be two sets of Attorney General's guidelines for FBI counterterrorism investigations, there should be consistent standards for investigations that have substantial First Amendment implications.

Another question raised by Director Sessions is the extent to which leaders and members of a group may be investigated as part of the overall investigation of the group, without opening individual investigations that have their predicates reviewed separately. This issue could arise under each of the different Attorney General's guidelines currently applicable to various types of FBI investigations. The CISPES investigation revealed a lack of consistent policy on this question among FBI components and between the FBI and the Justice Department. Indeed, in response to queries by FBI inspectors regarding the CISPES case, the Counsel for Intelligence Policy established a new, prospective interpretation of the current classified Attorney General's guidelines. Further evaluation of this new interpretation is needed before it becomes established policy. Clear standards are required so that FBI Special Agents and field supervisors know what kinds of inquiries they have the discretion to make about a specific individual under the "umbrella" of the investigation of a group or faction or enterprise. The purpose is not to inhibit necessary flexibility, but to provide consistent criteria for review and accountability under the various guidelines.

In light of this testimony and the record of CISPES, the Committee is pleased that Attorney General Dick Thornburgh has adopted the recommendation of Director Sessions and has established an FBI/Justice Department working group, chaired by the Counsel for Intelligence Policy, to recommend modifications in the current Attorney General guidelines. The Committee believes the working group should consider alternatives to the current framework, including a single set of guidelines for all FBI counterterrorism investigations of domestic-based groups and/or separate guidelines for international terrorism investigations that focus on violent factions rather than entire organizations.

The working group should consider declassifying the principal provisions of its revised guidelines for international terrorism investigations of domestic groups. Committee members have stressed the importance of letting the American people know the standards under which the FBI may investigate their activities.

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[92] Ibid., p. 90.

[93] House Report 95-1283 (June 8, 1978), p. 45; cf., Senate Report 95-701 (March 14, 1978), p. 30.

Given the close relationship between the guidelines and FISA definitions, consideration should also be given to whether new or revised guidelines should be accompanied by any modifications in the corresponding FISA statutory provisions. The Judiciary Committee and the Select Committee on Intelligence should be consulted prior to the issuance of new or revised Attorney General's guidelines for FBI counterterrorism investigations and the formal proposal of any corresponding FISA amendments.

In light of its continuing interest in the guidelines issues raised by the CISPES investigation, the Committee is asking the Attorney General to provide the proposed new guidelines to the Intelligence and Judiciary Committees of the Senate prior to his final approval of such guidelines, so that the Committee might consider them and offer any views they may have.

C. FBI REVIEW AND APPROVAL PROCESSES

Director Sessions has instituted a substantial number of changes within the FBI to rectify the shortcomings in FBI review and approval processes brought to light by the CISPES investigation.

Critical decisions in the CISPES case were made at the lowest supervisory level at FBI Headquarters. According to Director Sessions, "At the inception of the CISPES investigation, the approval level rested . . . with the operational supervisor." The Director concluded that this was "too low a level, given the sensitivity of this type of investigation." His principal response was to require that "all international terrorism investigations . . . be approved at a higher level" and that "the approval level for international terrorism investigations of groups be at the Section Chief level at FBI Headquarters." The Director stated that this would be "a significant elevation of the approval level and brings each of these cases to the attention of the individual responsible for the nationwide management of this important investigative program." When asked whether he would be informed personally of any future cases involving First Amendment rights similar to CISPES, Director Sessions replied that he "would hope . . . that the Director will be aware of it, sir." [94] He added that "it is not functionally impossible for the Director to handle" decisions to open such cases and that a list is provided each month of "the exact number of the investigations that are under way." [95] The Committee believes that an investigation having First Amendment implications comparable to the CISPES case should have the Director's personal review.

Another flaw that Director Sessions found in the review process was inadequate assessment of case objectives and of whether the investigation was accomplishing those goals. In response, the Director required "that the Section Chief review international terrorism investigations of groups every six months and that the Deputy Assistant Director having oversight of the terrorism program review each of these cases annually." This review must include "an assessment of the investigative objectives of each case and a determination of whether the investigation is consistent with and headed toward accomplishment of these objectives. The mission must be crystal clear and sharply focused."

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[94] SSCI Hearings, September 14, 1988, p. 143.

[95] Ibid., p. 144.

As with initial approval, Director Sessions determined that continuing review of investigations required greater attention where they raised First Amendment concerns. He concluded "that the mechanism designed for review of international terrorism cases, particularly of groups (including review by the Department of Justice's Office of Intelligence Policy and Review), did not alert reviewing officials to the fact that particularly sensitive investigative activities were being undertaken and did not alert them to the full scope of an investigation." He cited as one example the fact that "in the CISPES investigation there were instances when activities that were essentially political in nature were surveilled." Another example was the October, 1983, communication to all 59 FBI field offices which "unnecessarily broadened the scope of the CISPES investigation and . . . was ordered without sufficient prior review." The Director took the following actions to address these aspects of FBI Headquarters supervision:

> I have further refined the review and approval process to ensure that higher level officials are aware of such surveillances (and other sensitive investigative activities) and to ensure that if these surveillances and activities do take place, they are fully justified.
>
> . . . I have instructed that clear and concise criteria be developed for judging the appropriateness of the scope of all international terrorism investigations and that the scope of such investigations be regularly reviewed.

The Director found "there was no requirement that higher level officials be advised when certain activities (that by their very nature must be scrutinized closely) were being used. Such activities include surveillances at public rallies, attendance at meetings, and other similar investigative techniques." In response to this deficiency, he stated that:

> Each time a document is prepared seeking approval or review of these types of investigations, including domestic security investigations, I will now require inclusion of a description of the investigative activities that have been undertaken to date. If sensitive techniques are to be utilized—and often they must be utilized—higher-level officials will be able to determine (and required to determine) whether a particular investigation merits the use of such techniques.

Furthermore, the Director ordered "that the Bureau's Legal Counsel Division participate from now on in providing instructions in cases where the potential exists for confronting legitimate First Amendment activities in the course of the investigation." The Committee believes careful attention is needed to the issues raised by the FBI's receipt of extensive information about lawful protest demonstrations from other Federal, State, and local agencies.

These administrative measures supplement the approach adopted under Director Webster of assigning full-time responsibility to designated special assistants to ensure that sensitive investigative activities conform to the Director's policies, which Director Sessions has also continued. In addition to these actions, in 1987 the FBI Criminal Investigative Division created a position of special assistant to the Assistant Director comparable to the long-established special assistant in the Intelligence Division.

In addition to placing new responsibilities on FBI Headquarters supervisory personnel, Director Sessions instituted changes in general FBI policies, training, and internal inspection programs. The

FBI does not have to wait for new Attorney General's guidelines to develop and institute its own policies. Thus, the Director ordered "the development of written guidance concerning activities protected by the First Amendment and development of written guidance concerning the collection and preservation of printed public source material."

Director Sessions recognized that written policies cannot be effectively implemented if they are not communicated to the field through training and in response to field inquiries. He found FBI training to be insufficient both Bureau-wide and for new supervisors who, in certain cases involving CISPES, "did not have sufficient familiarity with the terrorism program to ensure meaningful case supervision." Especially troublesome was the Director's finding that, even when FBI Headquarters did provide guidance to the field on dealing with activities protected by the First Amendment, FBI Headquarters "received reports on such activities that failed to specify why the reports were necessary." The Director addressed both levels of training:

> I have instructed that additional training on how to deal with activities protected by the First Amendment be given to all Agents, nationwide. This will include training for new Agents, training for managers, and training for Agents working these types of cases.
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> . . . I have instructed that new field supervisors (and supervisors new to a particular program) receive a comprehensive briefing on all programs under their responsibility. This will include making certain that they are familiar with pertinent guidelines and reference material to help them deal with the types of issues presented by the CISPES investigation.
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> In a related matter, to make sure that the FBI learns from and continues to benefit from the lessons learned in the CISPES case, I have instructed that all the findings of my inquiry be brought to the attention of all senior managers in the FBI so that they understand what precipitated the need for the changes I have instituted. I intend to make certain that the deficiencies in the CISPES investigation and in the operation of Frank Varelli are included in relevant training programs.[96]

In a letter of December 16, 1988, to the Chairman of the Select Committee, Director Sessions reported on progress in developing the new training:

> Our Legal Counsel Division has developed a specific block of instruction relating to investigations that may implicate rights protected by the First Amendment. This will be utilized in instructing all new Special Agents attending the FBI Academy. A separate program has been developed for use in instructing and providing guidance to Special Agents investigating and managing these types of cases. For example, staff of the Legal Instruction Unit at the FBI Academy will speak to selected groups of investigators who will be returning during the coming year to attend three counterterrorism in-services. Our Legal Counsel Division also provided First Amendment training to our Principal Legal Advisors during a recent conference. This training, and an instructional outline that will shortly be sent to all of our field offices, will enable our Principal Legal Advisors to provide First Amendment instruction, as part of their regular legal instruction program, to all field investigators.
>
> The goal of this training is to further sensitize Special Agents to First Amendment rights and values that may be implicated in investigations within the jurisdiction of the FBI. The training will also provide additional guidance to these Special Agents regarding how and when to request assistance and analysis from our Legal Counsel Division.

Communication with the field was also faulty in the CISPES case, where in some instances field requests for guidance did not receive proper attention. Director Sessions "instructed both of the

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[96] Ibid., pp. 126 and 128.

FBI's investigative divisions to make certain that tracking and monitoring systems are in place to ensure that these requests—and particularly requests for guidance on justification, focus, and the use of sensitive techniques—are brought to the attention of higher level Bureau officials."

Other policy changes made by Director Sessions in the FBI's day-to-day operation "range from increased examination of indexing processes to reexamination of the usefulness of the FBI file sometimes referred to as the 'Terrorist Photograph Album.' " Specific procedures were instituted to keep track of communications from the Justice Department's office of Intelligence Policy and Review.

The FBI Inspection Division plays a key role in FBI management, because its regular inspections report on the effectiveness and propriety of the work of every field office and FBI Headquarters division in meeting the objectives set by Bureau leadership. Virtually all senior FBI managers serve on the inspection staff prior to high-level assignments. Director Sessions recognized the importance of the Inspection Division:

> I have instructed the Bureau's Inspection Division to develop new audit procedures and to provide more in-depth review of the asset and informant programs, including review of such matters as the bona fides and reliability of assets and compliance with relevant rules and regulations. I have also instructed that, during each field and headquarters inspection, all open international terrorism investigations of groups be reviewed not only for compliance with applicable guidelines, rules and regulations, but also to determine whether the scope and focus of those investigations are appropriate and properly documented. As part of this process, there will be increased training and specialization for our inspectors and their staffs to ensure the adequacy of these reviews.

This combination of written policies, training, and internal inspection brings to bear all the resources of FBI management in translating the lessons of CISPES into practice. In the end, however, the implementation of these measures will depend on sustained interest by the Director and continuing oversight by the Congress.

D. THE DISPOSITION OF CISPES FILES

The FBI files on the CISPES investigation contain information about the lawful political activities of Americans that should not have been collected by the U.S. Government. In many respects the CISPES investigation was unique in the recent history of the FBI. Consequently, unique remedial measures must be considered to minimize any potential long-term damage to individuals whose lawful activities came to be recorded in FBI files as a result of this investigation.

Such damage is not as likely as some may fear. As Director Sessions testified, most of the names mentioned in the CISPES files are not indexed in the central filing system and are, as a practical matter, irretrievable. In disseminating information from its files to other agencies for purposes such as employee background investigations, the FBI does not automatically send everything it has in its files on the individual even if such information is retrievable. The policies in effect at FBI Headquarters result in the screening out of non-pertinent information, and the report of an individual's affiliation with CISPES or its political activities would not necessarily be pertinent to a federal employment or security clearance decision.

Director Sessions has announced the FBI's willingness "to consider, on a case-by-case basis, requests from individuals or groups who wish to have their names expunged." In addition, the Director stated his intent to limit the dissemination of names in the CISPES files:

> As a general proposition, I believe the FBI should take special care in dissemination of information about people whose names ended up in files merely because they attended CISPES meetings or participated in CISPES activities. One routine dissemination of file information comes when other government agencies request FBI record checks in connection with employment matters. It would obviously be inappropriate, in responding to such a request, to make a disclosure that would indicate, directly or by implication, that someone who simply attended a CISPES rally or had contact with the group in another way was somehow supporting international terrorist activities. Consequently, I have ordered senior personnel at the Bureau to develop criteria for restricting dissemination of information in CISPES files (except in response to Freedom of Information Act and Privacy Act requests, which will not be affected).

Asked about possible expunging of all the names, Director Sessions replied, "I don't know that I should rewrite history." [97] He expressed concern that the Federal Records Act requires the retention of historically significant government files and that the CISPES case files meet the standards for historical significance. He also noted that the Privacy Act provides a mechanism for expunging files at the request of an individual.[98] An alternative would be to transfer the files to the National Archives, where they would be subject to the Freedom of Information Act and Privacy Act, but would not be maintained in FBI offices throughout the country.

Following his testimony, Director Sessions sent a letter dated September 29, 1988, describing his initial "action to restrict dissemination of the information about individuals and groups contained in our CISPES investigative files." He noted that, under the FBI Records Retention Plan and Disposition Schedule approved by the National Archives and Records Administration (NARA) pursuant to the Federal Records Act (44 USC 3301 et seq.), international terrorism files "must be maintained for fifty years" when they become the responsibility of the Archives. Records compiled during the CISPES investigation are covered not only as international terrorism files, but also by the ban in the Schedule on destruction of files considered "exceptional." One criterion for the "exceptional" designation is that the investigation was the subject of testimony before a Committee of Congress.

Director Sessions reported that he had instructed the FBI's Criminal Investigative Division, Legal Counsel Division, and Records Management Division to take the following actions:

> (1) The CISPES investigative files should be maintained as they now exist. This is in recognition of the above restrictions and of the possible historical significance of the records.
>
> (2) the FBI will consider requests from individuals to amend or expunge records pertaining to them. These requests will be considerd on a case-by-case basis, and, of course, any intended expunction will have to be coordinated with and approved by the NARA.
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> (3) Any indexing of individual names in the CISPES investigative files will continue unchanged from the manner in which it was originally done, and the all-inclu-

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[97] Ibid., p. 137.

[98] HPSCI Hearing, September 29, 1988, pp. 27-28 and 30.

> sive index created by the FBI's Inspection Divison will not be incorporated with our general indices. This will ensure continuation of limited retrievability.
>
> (4) In recognition of your concern over the continued maintenance of these files, I have instructed that criteria be established to govern dissemination outside the FBI of CISPES file information pertaining to individuals. These criteria will include procedures requiring additional review and approval for the dissemination of any such information. At the time, I cannot advise you of the specific criteria which will be adopted as drafting such guidance is a task I have assigned to several members of my executive staff. Such restrictions, of course, would have no effect on disclosures made pursuant to the Freedom of Information Act and the Privacy Act.

Director Sessions went on to explain again that his "primary concern. . . . is not the *existence* of names in the CISPES investigative files but rather what *dissemination* is made of those names."

It is unclear, however, whether this would mean taking steps to limit dissemination of information from CISPES investigative files *within* the FBI. Information on a person's innocent CISPES affiliation or activities ought not to be used in material that the FBI might later prepare for its own purposes. The FBI's decision to return to each field office its CISPES-related documents increases the likelihood that these files will be used, despite whatever limits FBI Headquarters may put on such use.

In response to a subsequent letter from the Chairman and Vice Chairman that proposed expunging the files or transferring them to the Archives, Director Sessions replied on November 12, 1988, "Although I can make no promises at this time, I can assure you that all possible avenues will be explored to make this final decision legally acceptable and equitable to all concerned. . . . Once the final decision is made and approved by the Attorney General and the National Archives, if necessary, you will be notified."

In a letter of April 3, 1989, to Rep. Don Edwards (D-CA), Chairman of the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, Director Sessions called attention to the suit *CISPES, et al. v. William S. Sessions, et al.* in U.S. District Court for the District of Columbia:

> The existence, maintenance, and use of the files, as well as the information contained therein, are now the subject of litigation. If the suit proceeds to the merits, the FBI will likely be required to process and produce many documents from the CISPES files in response to discovery requests. This possibility, and the possibility that the Court will grant the motion for class certification, require that the FBI maintain the integrity of the CISPES files, lest information required in the litigation be destroyed. We have consulted with appropriate officials within the Department of Justice (DOJ) responsible for defending this suit, and we have been advised that the files should not be altered during the pendency of this litigation.

In the meantime, according to the Director, "specific actions have been taken to prohibit dissemination of information from field office and FBI Headquarters CISPES files without approval of senior officials at FBI Headquarters, including our Legal Counsel Division."

The Committee favors the removal from FBI custody—by expunging or transfer to the Archives—of the FBI Headquarters and field office files on the CISPES international terrorism investigation and the comparable files on CISPES spin-off investigations which lacked information establishing a valid independent predicate. If procedures are needed to accommodate FBI interests in, for example, the processing of Freedom of Information Act requests to protect sources and methods, such arrangements can be made without opening the files to wider access.

This important matter requires continuing attention by the Judiciary and Intelligence Committees. The question of disposition of the CISPES files is at issue in private lawsuits that have been filed in federal court. It may be preferable for the Executive branch and Congress, rather than the courts, to devise an appropriate resolution of the legal and policy issues that takes into account all legitimate concerns.

The Committee will continue to monitor this matter until it is satisfied that information in the CISPES files which never should have been gathered in the first place—much of which has the potential to damage the reputation of innocent persons who have involved themselves in no illegal activity—is expunged from the files of the FBI or otherwise protected from use or dissemination within or outside the FBI, except to service Freedom of Information Act or Privacy Act requests, etc. Until this is accomplished the Committee will not feel that the matter has been brought to a satisfactory conclusion.

ADDITIONAL VIEWS OF SENATOR ARLEN SPECTER

The FBI's internal investigation of its role in the CISPES case and the Committee's hearings and report make clear that if there had been an effective system of management and administrative oversight in place for cases involving First Amendment rights, the Bureau's 1983–1985 investigation of CISPES probably would have been avoided.

According to a senior FBI official, the failure to implement inspection measures "contributed" to the failures in the CISPES investigation. In 1982, the FBI's Inspection Division identified and reported deficiencies in the Terrorism Section's policy structure and training. While it recommended corrective actions, those actions were not effectively implemented because of internal disagreement and the lack of a follow-up system in the Inspection Division, which was designed to serve the Director in a management oversight role.

According to FBI policy at that time, the Director would have been apprised of the report, the recommendations and disagreements on implementation. There is no record, however, that he either saw or acted upon them.

In addition, the Director had instituted certain internal administrative safeguards to ensure that his policies with respect to First Amendment rights were properly implemented, especially in domestic terrorism and foreign counterintelligence investigations. However, the record shows that these safeguards did not work effectively for international terrorism investigations.

Where First Amendment rights are involved on a sensitive political issue such as United States policy in El Salvador, any FBI investigation should have been subject to the personal oversight of the Director himself. There is no adequate explanation as to why that was not done in this matter.

In his testimony, Director Sessions stated that he has taken steps to "substantially increase the likelihood that future CISPES cases will not occur." But, those corrective steps may not be sufficient. In his response to the Committee's question of whether he can ensure that he will personally be informed of future cases involving First Amendment rights similar to the CISPES case, Director Sessions indicated that he would "hope" that he is aware of them. Clearly, more is needed, as the Committee's report stresses.

FBI procedures should specifically require the Director's personal oversight on such First Amendment matters.

The inadequacy of the FBI Inspection Division's follow-up on the 1982 Terrorism Program inspection suggests a need for more effective internal oversight, under the Director, to serve both the Director and the American public. The FBI acted in the mid-1980s to strengthen this system by instituting an additional follow-up requirement for inspection reports. Nonetheless, other improvements are required.

In November, 1988, the General Accounting Office completed an inspection of the FBI's inspection capabilities. While it noted improvements since its 1979 inspection, the GAO recommended that the head of the FBI's Inspection Division be independent in order to ensure permanency in the position and to avoid "instances where leaders of the division may not be willing to report situations or make recommendations consistent with what should be done because of their concern about their future careers as a result of presenting 'bad news' to the leadership." The latter is the primary reason for the creation of independent Inspectors General in 24 federal departments and agencies, including the Department of Justice.

On February 19, 1988, I introduced S. 2076, an act to create an independent Inspector General for the FBI. I am re-introducing that legislation in light of the Committee's report on CISPES.

Systematic accountability and oversight are fundamental tenets of good and effective management. The American public, the FBI and the Director would be well served by such independence in the Bureau's Inspection Division.

Appendix—Statements by the Perpetrators of Certain Bombings

Communique From the Armed Resistance Unit

April 26, 1983.

Tonight we attacked Fort Lesley McNair Military Base in Washington, D.C. Fort McNair houses one branch of the U.S. War College, the National Defense University, and the Inter-American Defense College (IADC). This action was taken in solidarity with growing liberation movements in El Salvador, in Guatemala, and throughout Central America, and with the socialist government of Nicaragua. This region today is the center of world revolution and the front line in the defeat of U.S. imperialism. For this reason, it is currently the target of the most vicious U.S. counter-revolutionary attacks.

At the IADC, the U.S. government trains high-ranking military officers from Latin America in its program of counter-insurgency warfare. Trained in torture and terror, tied to the U.S. military and the CIA, its graduates are responsible for the overthrow of progressive and democratic governments throughout Latin America and for the establishment of fascist military regimes that oppress the masses of people. They are responsible for the murder of over 30,000 El Salvadoreans. The IADC serves to keep Latin America as the backyard of Yankee imperialism and the graveyard of millions.

The people of El Salvador, under the leadership of the FMLN/FDR, are fighting to end that oppression. Their righteous struggle for peace, self-determination, economic and social justice is a beacon for the peoples of Latin America and the world who have seen their lives, labor and resources sacrificed for the enrichment of U.S. imperialism and its multi-national corporations.

The U.S. response is to use all the techniques of counter-insurgency taught at the IADC. Green Berets fight directly in El Salvador while thousands of El Salvadorean government troops train at Ft. Bragg and Ft. Benning, hundreds of dollars of military aid is given to the junta, and massive "war games" are conducted by U.S. troops throughout the region. The CIA has hundreds of agents in Central America and is training and supplying thousands of mercenaries and ex-members of Somoza's National Guard who are currently invading Nicaragua. The U.S. is openly transforming Honduras into a garrison state to implement U.S. military strategy in the region. Facing military defeat in El Salvador, the U.S. is implementing "rural pacification" programs that will result in the deaths of tens of thousands, the forced displacement of hundreds of thousands of campesions [sic] into barbed-wire-enclosed strategic hamlets, and the destruction of the land. Faced with a people's war, the U.S. attempts to kill the people. This is full-scale counterinsurgency war, and we must actively oppose it.

This is not the policy of just one bad administration. It is the reality of U.S. imperialist control in the Third World. It is the result of a system based on maximizing profit for relatively few through the oppression of and exploitation of hundreds of millions throughout the world and within its own borders. Caught in a politcal and economic crisis of its own making, faced with the growing struggles of people throughout the world for national liberation and socialism, the response of the U.S. is war, fascism, and genocide.

The courage, sacrifice, and determination of the people of El Salvador is [sic] an inspiration to oppressed people throughout the world. Our action is part of the growing world solidarity with that struggle.

We in the U.S. are inside the belly of the beast. Solidarity is growing but alongside our protest we must build an active resistance to the U.S. war machine. The growing militarization of our society means that the military is everywhere—and vulnerable to our action. Recruiting stations dot neighborhoods, ROTC functions on campuses, factories produce the weapons, military bases train the men. Resistance is not only an act of solidarity—it is the basis for own revolutionary movement.

El Salvador will win, Guatemala will win, the people of Latin America and the Caribbean will be free, U.S. imperialism will be defeated.

Commandante Ana Maria (Melida Anaya Montes) esta presente!

Victory to the FMLN/FDR! Solidarity with the peoples of Central America! Build a revolutionary resistance movement! Fight U.S. imperialism.

Defend the Nicaraguan revolution!

ARMED RESISTANCE UNIT BOMBS THE U.S. CAPITOL COMMUNIQUE FROM THE ARMED RESISTANCE UNIT—NOVEMBER 7, 1983

Tonight we bombed the U.S. Capitol building. We attacked the U.S. government to retaliate against imperialist aggression that has sent the marines, the CIA and the army to invade sovereign nations, to trample and lay waste to the lives and rights of the peoples of Grenada, Lebanon, El Salvador, and Nicaragua, to carry out imperialism's need to dominate, oppress, and exploit. Every act of the U.S. military—directed by the White House and Congress—has been nothing less than an outright attack on the fundamental right of nations to self-determination, peace and freedom. These acts have been carried out with cynical disregard for life as well as for truth. Reagan calls progress and revolution "terrorism" and tries to portray the true terrorism of imperialist invasion as "democracy" and "freedom." Only a government arrogant enough to believe that its economic and political needs should dominate the whole world can call the invasion of Grenada a "rescue operation," the invasion of Lebanon a "peace-keeping mission," the facist rulers of El Salvador "democracy's friends," and the contras "freedom fighters." The Reagan lie that the invasion of Grenada prevented a "Cuban takeover" is nothing less than a pretext for eliminating a Black socialist nation in the Caribbean. Last year, in a dress rehearsal called "Ocean Venture," the U.S. armed forces practiced the Grenadian invasion on the island of Vieques, Puerto Rico. The vicious attack on the socialist nation of Cuba—which has provided a consistent, revolutionary example of proletarian internationalism—and the attempt to discredit and destroy the People's Revolutionary Army and the New Jewel Movement of the Grenadian people, show the extent to which the U.S. will go to control and dominate Latin America, Central America, and the Caribbean, and to try to defeat socialism in the region. With the collusion of the press, the U.S. government is building anti-communism to justify these attacks and further military aggression to resolve its own internal economic and political problems.

We are acting in solidarity with all those leading the fight against U.S. imperialism—the peoples of Grenada, Lebanon, Palestine, El Salvador, and Nicaragua—who are confronting direct U.S. aggression, and those, like the people of Chile and the Philippines, who are struggling to free their nations from U.S. puppet regimes. They are all paying a tremendous price for freedom, and we commit ourselves to fight with the same seriousness for the same goals—self-determination for oppressed nations, the total defeat of imperialism, and the building of a socialist world.

Our action also carries a message to the anti-imperialist movement here, that we need to resist and fight as people all over the world are doing—with principle, consistency and determination. We join with all the people across the U.S., and the millions throughout the world, who condemn U.S. imperialist aggression. Our solidarity with the liberation struggles under attack by U.S. imperialism must be uncompromising, militant, and unwavering in supporting the right of those nations to self-determination. We cannot fall into the trap of debating which wing of the government has the right to declare war, or which politician might be less blatant in his racism and anti-communism, nor can we be fooled by those bourgeois politicians who claim to be sympathetic to Third World nations—and who would more "humanely" exploit those nations in the interest of U.S. imperialism. The enemy is the imperialist system. Electoral politics and pacifism are paths that have been tried many times, and that have failed. To follow those paths now will only weaken and undermine the movement and defeat our attempts to organize greater numbers of people to resist.

Our action carries a message to the U.S. imperialist ruling class: we purposely aimed our attack at the institutions of imperialist rule rather than at individual members of the ruling class and government. We did not choose to kill any of them at this time. But their lives are not sacred, and their hands are stained with the blood of millions. Let it be as clear to the people of this country as it is to the rest of the people of the world that the U.S. ruling class are war criminals, and they will be held accountable for their crimes.

33 years ago almost to the day, Oscar Collazo and Griselio Torresola, two Puerto Rican Nationalists fighting for Independence for Puerto Rico, attacked another part of imperialist power—the Commander-in-Chief, the President of the U.S. Their action was one of the first in which the oppressed brought the war back to the doorsteps of the oppressor. We salute them and all those Puerto Rican, Mexican, New Afrikan [sic], Native American and North American freedom fighters who have been killed or captured in the struggle. To them also, our action carries a message—our commitment to carry on the struggle.

U.S. military out of Grenada, Lebanon and Central America!

Defend the Grenadian and Nicaraguan Revolutions!

Victory to the FMLN/FDR!

Support the Lebanese National Movement and the P.L.O!

Fight U.S. imperialism! build a revolutionary resistance movement!

(Reprinted by Resistance Task Force P.O. Box 254 Stuyvesant Station New York, New York 10009)

ARMED RESISTANCE UNIT BOMBS NAVY COMPUTER

Communique No. 2

COMMUNIQUE FROM THE ARMED RESISTANCE UNIT, AUGUST 17, 1983

Tonight we attacked the computer operations complex at the Washington Navy Yard. We have acted in solidarity with the revolutionary struggles of the peoples of Central America and the Caribbean. We hope that this act of proletarian internationalism is just one of a growing number by anti-imperialists in this country determined to show that there will be no blockade between the struggle of oppressed peoples around the world and those here inside the U.S. borders.

The U.S. government wants war. It is planning for it and planning on it. There is massive U.S. involvement in El Salvador; there are 6000 marines in Honduras poised to attack Nicaragua while a de facto naval blociade [sic] surrounds its coasts; U.S. warships threaten to violate Libyan waters and U.S. aircraft its airspace; the U.S. is overseeing the military partition of Lebanon.

The computer complex at the Washington Navy Yard is used to train high-ranking officers at the Naval War College. They simulate massive naval battles, practicing how to sacrifice the lives of millions—perhaps hundreds of millions—for the interest of the U.S. ruling class. The computers are part of the technology of death that the U.S. government employs to try to defeat the struggle of peoples around the world for national liberation, for socialism and for peace. U.S. finance, mining and industrial capitalists have hundreds of billions of dollars invested in the exploitation of Latin American land and labor and use the government's military might to protect their profit.

We have acted tonight to contribute to the building of a resistance movement in this country that will rob the U.S. government of the stable home base it so desperately needs. This is a lesson from the Vietnam War that we can apply now. Our movement can organize the soldiers and sailors not to fight; the military's recruiting efforts can be blocked; and the technology can be sabotaged. The government wants the political debate in this country to go on between Republicans and Democrats over how to maintain imperialist control; our movement can be a progressive and anti-imperialist alternative that challenges that control.

Our action is a call directed to all who support the peoples of Latin America and oppose U.S. aggression to embrace the struggle for independence and socialism for Puerto Rico. Since 1898, the U.S. military occupation of the island to maintain it as a colony has been and is the most direct form of imperialism aggression against the nations of this hemisphere.

The U.S., confronted by what Reagan has the arrogance to call "the fire in our back yard," is committed to turning Puerto Rico into a military garrison to wage war against progressive movements in all of Latin America. Massive U.S./NATO exercises devastate Vieques; Ramey Air Force Base and for Buchanan Army Base are being re-opened; the U.S. counterinsurgency training center for the hemisphere may well be moved from Panama to Puerto Rico.

The revolutionary Puerto Rican Independence Movement will transform these U.S. plans into their opposite and bring the fire of Latin American revolution to the front yard and the very heart of the U.S. empire. Can those of us who know the true role of Kissinger and the CIA in Chile, the current reality of counterrevolution in Nicaragua and counter-insurgence in El Salvador withhold our support from those forces building the national liberation struggle of the Puerto Rican people? Alongside our demands in support of Nicaragua and El Salvador we fight for the independence of Puerto Rico. We extend our solidarity to the FALN and the revolutionary clandestine organizations fighting in Puerto Rico. We join with people around the world in demanding the freedom of Puerto Rican patriot and freedom fighter William Morales, the unconditional release of the 11 Puerto Rican POWs held in U.S. prisons, and the freedom of all Puerto Rican political prisoners and grand jury resisters.

The U.S. efforts to return to the days of gunboat diplomacy will fail. Oppressed and exploited people around the world learned an invaluable lesson from the heroic struggle of the Vietnamese people against U.S. imperialism. The imperialist war machine can be defeated through a protracted resistance and growing armed struggle. It is the time for progressive North Americans to renounce the empire and join with other oppressed peoples and take our own first step down the long road to revolution and a new socialist world. It is the only path that can bring peace, end fascist violence and promote the full development of humanity.

Defend the Nicaraguan Revolution! Victory to the FMLN/FDR!

Independence and socialism for Puerto Rico! Build a revolutionary resistance movement! Fight U.S. imperialism!

(Reprinted by Resistance, P.O. Box 254 Stuyvesant Station, New York, N.Y. 10009.)

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